148 U.S. 850

148 2 850

RECORD, CASE Nos. 13,617 & 13,618.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 404. 76

THE COMMERCIAL NATIONAL BANK OF PENNSYLVANIA, APPELLANT,

vs.

DAVID ARMSTRONG, RECEIVER OF THE FIDELITY NATIONAL BANK OF CINCINNATI.

TERM No., 405. 77

DAVID ARMSTRONG, RECEIVER OF THE FIDELITY NATIONAL BANK OF CINCINNATI, APPELLANT,

vs.

THE COMMERCIAL NATIONAL BANK OF PENNSYLVANIA.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

FILED AUGUST 28, 1889.

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vs.

THE COMMERCIAL NATIONAL BANK OF PENNSYLVANIA.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

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1 At a stated term of the circuit court of the United States of America within and for the western division of the southern district of Ohio, in the sixth judicial circuit of the United States of America, begun and had in the court-rooms, at the city of Cincinnati, O., in said district, on the first Tuesday of April, being also the second day of that month, in the year of our Lord one thousand eight hundred and eighty-nine, and of the Independence of the United States of America the one hundred and thirteenth—present, the Honorable George R. Sage, district judge—among the proceedings had were the following, to wit:

THE COMMERCIAL NATIONAL BANK OF PENNSYLVANIA, Complainant,
vs.
DAVID ARMSTRONG, Receiver of the Fidelity National Bank of Cincinnati, Defendant. } # 4087. In Chancery.

Be it remembered that heretofore, to wit, on the 23rd day of November, in the year of our Lord one thousand eight hundred and eighty-seven, came the complainant, The Commercial National Bank, by its solicitors, and filed in the clerk's office of said
2 court its certain bill of complaint herein against the defendant, David Armstrong, receiver, &c. Said bill of complaint is clothed in the words and figures following, to wit:

Bill of Complaint.

Circuit Court of the United States within and for the Southern District of Ohio and the Western Division Thereof.

THE COMMERCIAL NATIONAL BANK OF PENNSYLVANIA, Complainant,
vs.
DAVID ARMSTRONG, Receiver of the Fidelity National Bank of Cincinnati, Defendant. } In Chancery.

The bill of complaint of the Commercial National Bank of Pennsylvania.

To the judges of the circuit court of the United States for the southern district of Ohio:

Humbly complaining, showeth unto your honors your orator, The Commercial National Bank of Pennsylvania, that it is a corporation organized under and by virtue of the laws of the United States and having its place of business at Philadelphia, in the Commonwealth of Pennsylvania, and a citizen and resident of said State of Pennsylvania, and that David Armstrong is a citizen and resident of the State of Ohio and the southern district thereof and, as receiver of the Fidelity National bank, having his office and place of business and official residence within the county of Hamilton, in the western division of said district; and thereupon your orator complains and says that, as said receiver, the said Armstrong

has possession of all and singular the property, assets, goods, and chattels of the Fidelity National bank; that by the order
3 and decree of this court the said The Fidelity National bank hath been dissolved, and that the said Armstrong has been appointed said receiver by the Comptroller of the Currency in pursuance of the statute in such cases made and provided.

And your orator further says that in conducting its business as a banking institution chartered under the laws of the United States and in the usual course thereof it became and was necessary for it to receive for discount drafts for large amounts of money upon persons in divers parts of the United States, to discount the same, and collect the same through the banks in divers parts of the United States.

And your orator further says that in the usual course of business your orator employed the said The Fidelity National bank as its agent to collect the drafts and other negotiable instruments owned by it and payable in divers parts of the United States, as will herein and by the exhibit attached hereunto more fully and particularly appear.

And your orator further says that for the purpose of making such collection it made a contract with the said The Fidelity National bank, whereby it was to endorse to the said The Fidelity National bank all the instruments hereinbefore mentioned for collection only by the said The Fidelity National bank, and the said The Fidelity National bank was to collect the same without charge for its services in collection, and to remit all sums of money collected on the 1st, 11th, and 21st days of each month.

And your orator further says that by said endorsement and by the terms of said contract the said instruments so endorsed were held by the said The Fidelity National bank for collection only and not as an owner thereof, and that the said sums so as
4 aforesaid collected came into the hands of the Fidelity National bank in trust, to be remitted to your orator upon the days as aforesaid, and not as a portion of the funds of the said The Fidelity National bank for its general purposes.

And your orator further says that in pursuance of said contracts it endorsed to the said The Fidelity National bank the drafts, notes, and other instruments more particularly set out in the account hereunto attached and marked "Exhibit A," and which your orator prays may be taken as part of this its bill of complaint as if fully and particularly set out therein, and that the same have been duly collected by the said The Fidelity National bank and by the said David Armstrong, receiver, some portion thereof to an amount to your orator unknown, but which it believes and so charges to have been much the larger part thereof, having come into the hands of said David Armstrong, receiver, from the agents employed by the said The Fidelity National bank subsequent to his appointment as such receiver, and that in consequence thereof the sums therein collected were held by the said The Fidelity National bank and are now held by the said David Armstrong, receiver, as separate funds and property of this your orator and not as part of the general

funds of the said The Fidelity National bank or of the said David Armstrong, receiver of the said Fidelity National bank, for the general creditors of said bank, and that the said funds are held by the said David Armstrong in trust for this your orator, and that the said David Armstrong, receiver, is bound to pay the same upon the demand of this your orator, but, though often requested, has failed to do so, and that the said sums amount in total—as will appear from said account—to the sum of $17,466.32, and that to the end thereof the said David Armstrong,
5 as receiver, may true answer make to the premises aforesaid, and more particularly that he may answer and set forth in the manner aforesaid whether the said sums in said account set forth have been collected by the said The Fidelity National bank or by the said David Armstrong, and what portion thereof have been collected by or come to the hands of said bank and of said Armstrong, distinguishing which have been remitted to said Armstrong by the agency employed to collect the same or collected by the said Armstrong since his appointment as receiver of said bank, and whether the said contract hereinbefore mentioned hath been made by and between the Fidelity National bank and this your orator; and that it may be established by the decree of this honorable court hat the said David Armstrong, receiver, holds the said sums of money upon trust for this your orator, to pay the same upon demand to it, and that the said David Armstrong, receiver, may be compelled to make such payment forthwith, and that your orator may have such other and further relief in the premises as to your honors shall seem meet and as this case may require. May it please your honors to grant unto your orator a writ of subpœna, to be directed to the said David Armstrong, as receiver, commanding him, at a certain time and under a certain penalty therein to be limited, personally to appear before this honorable court and then and there full, true, direct, and perfect answer mak*ing* to all and singular the premises, and further to stand to, abide, and perform such further order, directions, and decrees therein as to this honorable court shall seem meet.

HARMON, COLSTON, GOLDSMITH & HOADLY,
Solicitors for Complainant.

GEO. HOADLY, JR., *Of Counsel.*

6 Please report on the enclosed b-ank at your earliest convenience.

Fidelity Nat'l Bank, Cincinnati, O., in Account with the Commercial National Bank of Penna.

DR.			CR.	
1887.			1887.	
May 16.	Fees, 118,287, ch'g'd—we don't cr.....	3 52	May 12. Paid, for which we have no cr....	7 65
	Fees, 119,284, ch'g'd—we don't cr.....	81 20	13. " " " " " " " ...	63 90
June 4.	Ernest & B., St. Joseph.....	140	June 6. " " " " " " " ...	69 23
	Bigley, Kansas City.....	352		
7.	Iowa City..... 481 29			
	Augusta Ky..... 97 25			
	Knoxville, T..... 25 68			
	Oshkosh..... 21 06			
	N. Orleans, La..... 31 20			
	Memphis, T..... 9 90			
	Connersville..... 8 08			
		674 46		

DR. CR.

	8.	Stanton	768 90			
		Schuyler	500			
		Bristol	341 61			
		Grafton	765 23			
		Milwaukee	40 63			
		San Antonio	496 97			
		Council Bluffs	499 54			
		Helena, Mont	40 44			
		Bristol	25			
				3,478 32		
	9.	Indianapolis	71 17			
		Catlettsburg, Ky	26 26			
		Wabash	72 86			
		Bay City, Mich	124 14			
		Indianapolis	253			
		Omaha	50			
		Omaha	10			
		Detroit	200			
				816 43		
	10.	Omaha	643 70			
		Owassa	125 55			
		East Saginaw	236 22			
		Hokomo	6 30			
		St. Paul	10			
		Lexington, Mo	2 56			
		Indianapolis	135 23			
		Indianapolis	56 73			
				1,216 29		
	11.	Springfield	40			
		Denver	100			
		Mexia, Txs	208 26			
		Iowa City	85 74			
Coupons,		Leavenworth	22 75			
		Leavenworth	28			
				574 75		
		Lindsay, Louisville		141 60		
	13.	Tompkins, Williamsport, Ind		37 77		
		Lincoln	132 81			
		Dubuque	741 12			
		Kansas	589 34			
		Michigan	364 30			
		Minnesota	55 29			
		Iowa	32 43			
		Iowa	100			
		Nebraska	236 85			
		Michigan	38 54			
		Tennessee	100 05			
		"	24 37			
		"	35			
		"	31 79			
		"	200			
		"	50 41			
		"	30 17			
		Topeka	15 55			
		Grand Rapids	15 25			
		Milwaukee	17 81			
		Indianapolis	17 10			
		Richmond, Ind	113 80			
			3,041 98	7,516 34		131 78
7						
1887.		Amount bro't f'd		7,516 34		
June 13.		Am't	3,041 98			
		Nashville	37 95			
		Nashville	77 95			
		Lansing	72 20			
		Knoxville	133 64			
				3,363 72		
	14.	New Orleans	148 97			
		Kansas City	82 80			
		Chattanooga	131 17			
		Covington, Ky	120			
		Columbia	37 55			
		Minneapolis	21			
		Grand Rapids	900			
		Fort Worth	255			
		Cincinnati	180 29			
		Grand Rapids	84			
		Carthage, Mo	5 10			
				2,055 88		
	15.	Axtell, Neb	32 50			
		Minneapolis	100			
				132 50		
1887.		Amount bro't f'd				131 78
June 17.		Prot., Kay & Co				1 54
	18.	Ret. item, Meyer				25 35
	25.	" " on Grafton				765 23
		" " " Helens				40 44
	30.	" " " Lexington				2 56
Aug.	12.	Smallwood	24 05 / ex... 25			24 30
		Trading Co	243 12 / ex... 1 22			244 34
	15.	Paulson, Burlingame	150 / 1 35			151 35
		Sheridan, Mont				48 88
Sept.	5.	Thompson				24 52
		Pinesville, Ark	99 75 / ex... 25			100
		Balance				16,531 92

Dr.			Cr.	
16. Swarbrick, N. Orleans			177 21	
Lewisburg, T	64 18			
Bay City	161 12			
Lampasas	244 34			
Milwaukee	1,012 96			
Carlisle	15 25			
Check	1 50			
			1,499 35	
17. Indianapolis	33 98			
St. Paul	45			
Sterling, Ky	180 80			
Minneapolis	86 21			
Texarkana	130 81			
Huntingdon, Ind	48 45			
			525 25	
18. Memphis	13 13			
Detroit	44 83			
St. Paul	149 50			
Milwaukee	297 15			
Bay City	7 80			
New Orleans	26			
Burlingame	150			
Atchison, Kan	1,000			
M. Vernon	49 31			
Kansas City	177 16			
Newport, Ky	7 30			
			1,922 18	
Bigby, Kansas City			372 46	
Walmsby, Sedalia			279 30	
Albright, Louisville, Ky			155 10	
20. Ross, Louisville			18 75	
Aug. 9. Hoffman, S. Bend			24	
12. Smallwood, Houston			24 30	
16. Fees, Paulsont			1 35	[in pencil:] What is this?
Sept. 6. Thompson, Memphis			24 52	
			18,092 21	18,092 21
Balance		16,531 92		
Bateman, Road house		33 50		[In pencil:] 25 cts. coll'n chgs. Please cr.
Meyer & Co., Omaha		103 35		
Dietz & Co., Louisville		459 96		
Keller, Houston		56 25		
Meybacher, Marshal		16 20		
Hootz & B., Rock Island		86 06		
Olney & M., Clinton		173 08		
		17,460 32		

8 And afterwards, to wit, on the 23rd day of November, A. D. 1887, there was issued out of the clerk's office of said court our certain subpœna, directed to the marshal of said district and against said defendants herein, clothed in the words and figures following, to wit:

Subpœna in Chancery.

UNITED STATES OF AMERICA, *Southern District of Ohio,* } ss:

The President of the United States of America to the marshal of the southern district of Ohio, Greeting:

You are hereby commanded to summon David Armstrong, receiver of the Fidelity National Bank of Cincinnati, Ohio, citizen of and resident in the State of Ohio, if he be found in your district, to be and appear in the circuit court of the United States for the southern district of Ohio aforesaid, at Cincinnati, on the first Monday in February next, to answer a certain bill in chancery filed and exhibited in said court against him by the Commercial National

Bank of Pennsylvania, citizen of and resident in the State of Pennsylvania.

Hereof you are not to fail under the penalty of the law thence ensuing.

And have you then and there this writ.

Witness the Honorable Morrison R. Waite, Chief Justice [SEAL.] of the United States, this 23d day of November, A. D. 1887, and in the 112th year of the Independence of the United States of America.

Attest: B. R. COWEN, *Clerk.*

9 MEMORANDUM.—The said defendant is required to enter his appearance in this suit in the clerk's office of said court on or before the first Monday of January, 1887; otherwise the said bill may be taken *pro confesso.*

B. R. COWEN, *Clerk.*

And afterwards, to wit, on the 7th day of December, A. D. 1887, came the marshal of the district, to whom the above subpœna was in form directed, and returned into the clerk's office of said court the same, with his proceedings had thereon endorsed in the words and figures following, to wit:

Marshal's Return.

Received this writ at Cincinnati, Ohio, on the 23rd day of November, 1887, and on the 2nd day of December, 1887, at Cincinnati, O., I served the within-named David Armstrong, receiver — the Fidelity National Bank of Cincinnati, Ohio, by handing to him personally a true copy of this writ having all the endorsements thereon.

H. C. URNER, *U. S. Marshal,*
By RICHARD C. ROHNER, *Deputy.*

1 service	$2 00
1 copy	50
1 mile	06
	$2 56

And afterwards, to wit, on the 8th day of December, A. D. 1887, the following cost bond was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Cost Bond.

10 In the Circuit Court of the United States for the Southern District of Ohio.

COMMERCIAL NATIONAL BANK OF PENN. *vs.* DAVID ARMSTRONG, Receiver Fidelity National Bank. } No. 4087. Cost Bond.

I hereby acknowledge myself security for costs in this case.

W. B. SMITH. [SEAL.]

And afterwards, to wit, on the 31st day of December, A. D. 1887, the following appearance was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Appearance.

United States Circuit Court, Southern District of Ohio, Western Division.

THE COMMERCIAL NATIONAL BANK OF PENNSYLVANIA, Plaintiff,
vs.
DAVID ARMSTRONG, Receiver of the Fidelity National Bank of Cincinnati, Ohio, Defendant.
No. 4087. In Chancery.

Appearance of defendant.

Now comes David Armstrong, receiver of the Fidelity National Bank of Cincinnati, Ohio, by W. B. Burnett, U. S. attorney, S. D. O., and enters his appearance herein.

11 E. W. KITTREDGE AND W. B. BURNET,
Defendant's Solicitors.

And afterwards, to wit, on the 11th day of February, A. D. 1888, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Journal X, p. 533.

The defendant having duly entered his appearance herein, by his counsel, and having failed to answer or demur to the bill of complaint herein filed, it is now ordered, adjudged, and decreed that said bill of complaint be, and the same hereby is, taken as confessed.

And afterwards, to wit, on the 18th day of February, A. D. 1888, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Journal X, p. 541.

Now comes the defendant herein and presented his answer to the bill and prayed for leave to file the same, which was granted, and the said answer is hereby ordered filed, which is done accordingly.

And afterwards, to wit, on the 18th day of February, A. D. 1888, the following answer was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Answer.

12 Circuit Court of the United States, Southern District of Ohio, W. D.

THE COMMERCIAL NATIONAL BANK OF PENNSYLVANIA, Complainant,
vs.
DAVID ARMSTRONG, Receiver of the Fidelity National Bank of Cincinnati, Defendant.

Answer of David Armstrong, Receiver of the Fidelity Nat. Bank of Cincinnati, to the Bill of Complaint of the Commercial National Bank of Pennsylvania.

In chancery.

This defendant, now and at all times hereafter, saving and reserving unto himself all benefit and advantage of exceptions which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said bill contained, for answer thereunto, or to so much and to such parts thereof as this defendant is advised it is material or necessary for him to make answer unto, answering, says:

This defendant admits that the complainant is a corporation organized under and by virtue of the laws of the United States and having its place of business at Philadelphia, in the Common-
13 wealth of Pennsylvania, as alleged in the said bill.

And this defendant admits that David Armstrong is the receiver of the late Fidelity National bank, having his office and place of business within the county of Hamilton, in the western division of said district, as alleged in said bill; and this defendant further admits that said Armstrong has possession of all and singular the property, assets, goods, and chattels of the Fidelity National bank, and that by the order and decree of this court the said The Fidelity National bank has been dissolved, and that the said David Armstrong has been duly appointed receiver of said bank by the Comptroller of the Currency, as alleged in the said bill.

This defendant, further answering, says that on the 12th day of February, 1887, the said Fidelity National bank sent to the complainant a certain letter or circular, a true copy of which is hereto attached, marked "Exhibit A," which this defendant prays may be taken as part of this answer as if fully and particularly set out therein; and thereafter, on the 18th of February, 1887, in reply thereto, there was sent by the complainant to the said Fidelity National bank and received by the said Fidelity National bank a certain letter, hereto attached, marked "Exhibit B," which this defendant prays may be taken as part of this answer as if fully and particularly set out therein, and that thereafter the said complainants in pursuance of the agreement thus made by and between the said complainant and the said Fidelity National bank and pur-
14 suant to the *to the* uniform course of business thereunder, as hereinafter particularly set forth, sent to the said Fidelity

National bank divers commercial paper, consisting of checks and sight drafts, and also of promissory notes and drafts not payable at sight but payable at a certain time after their date or after demand, and the uniform course of business by and between the said Fidelity National bank and the said complainant in and about the credit and collection and remittance of the proceeds of the said commercial paper, including not only paper payable at sight, but the paper payable on time, and including each and every of the items set forth in Exhibit A, attached to the bill of complaint herein, was as follows and not otherwise, viz: Each and every piece of negotiable paper payable at sight, whether drawn upon a bank or upon an individual or individuals or a firm or corporation, that was received by the Fidelity — bank from the said complainant was by the uniform course of business by and between the said Fidelity National bank the said complainant entered up and credited at once upon the general account of the said Commercial National bank with and on the books of the said Fidelity National bank upon and as of the date of their receipt by the said Fidelity National bank in all respects as if the same had been cash, and thereupon the said Fidelity National bank became and was the owner of the said commercial paper so credited from and after the date of the receipt and credit as aforesaid
15 of the said commercial paper and of each and every item thereof, and each and every item of said sight or cash paper which was, as above set forth, credited upon receipt thereof, and being part of the commercial paper described in Exhibit A and attached to the bill of complainant herein, is more particularly set out in the statement hereto attached and marked Exhibit C, which this defendant prays may be taken as part of this his answer as if fully and particularly set out therein. This defendant further says that by the said uniform course of business by and between the said Fidelity National bank and the said complainant each and every item or piece of commercial paper payable on time and not at sight or on demand that was received by the said Fidelity National bank from the said complainant, and being part of the paper included in Exhibit A, attached to complainant's bill, was not credited at once upon its receipt in like manner with the cash items above described, but was entered up and credited to the complainant upon its general account upon the books of the said Fidelity National bank when and as soon as each and every several item thereof was collected.

And defendant further says that by the uniform course of business by and between the said Fidelity National bank and the said complainant, and during the entire course of business between the said banks, statements were sent by the said Fidelity National bank to the said Commercial bank upon the 1st, 11th, and 21st of each and every month, which said statements showed not only the balance that was due from the said Fidelity National bank
16 to the complainant at the date of each and every such statement, but showed also uniformly the credit by the said Fidelity National bank to the complainant upon the general account of each and every item of cash paper, being checks or drafts payable at

sight or on demand (including the items specifically set forth in Exhibet C, hereto attached), credited as of the date of their receipt by the said Fidelity National bank in all respects as hereinabove specifically set forth, and said accounts also showed uniformly the credit by the said Fidelity National bank to the said complainant of each and every item of time paper, not as of their receipt by the said Fidelity National bank from the complainant, but as of the date when credited after collection on the books of the Fidelity National bank, and for the amount of the balance shown by the said accounts upon the 1st, 11th, and 21st of each and every month, and including the cash or sight items as well as the time items so credited in the respective manners above set forth, the said Fidelity National bank sent to the complainant its check or draft payable to the said complainant; and this defendant further says that of the items and pieces of paper described and enumerated in Exhibit A, attached to the bill of complaint herein, by far the larger part were of the class and character hereinabove described as cash or sight items and are contained in Exhibit C, hereto attached, and of the remaining items or pieces of commercial paper described
in Exhibit A, attached to the bill of complaint herein, and
17 being the time items or drafts or notes not payable on demand
or at sight, some of them were placed to the credit of the complainant on the books of the Fidelity National bank and in the account of complainant prior to the 20th day of June, 1887. A more particular description and enumeration of all such items or pieces of paper included in the Complainant's Exhibit A, attached to his bill, and being such as were placed to the credit of the complainant prior to the 20th day of June, A. D. 1887, is set out in the account hereto attached and marked "Exhibit D," which this defendant prays may be taken as part of his answer as if fully and particularly set out therein; and this defendant further says that the remainder of the time items or pieces of commercial paper enumerated in Complainant's Exhibit A, but not including those described in Exhibits C & D, attached to this answer, were pieces of time paper or promissory notes or drafts payable not at sight but upon time that were placed to the credit of the complainant upon the books of the Fidelity National bank after the 20th day of June, 1887, but as of date June 20, 1887; but defendant avers that each and every item thereof of the class and kind last hereinabove described, being the time items not credited to the complainant on the books of the Fidelity National bank until the 20th day of June, 1887, were each and every of them paid and collected at the several places where
the same were payable, either on or before the 20th of June,
18 1887, *and* prior to the time when the said Fidelity National
bank closed its doors and was taken possession of by the Government. A more particular description and enumeration of said time paper which was not placed to the credit of the complainant on the books of the Fidelity National bank until after June 20, 1887, is set out in the account hereto attached and marked Exhibit E, which this defendant prays may be taken as part of this his answer as if fully and particularly set out therein; and this

defendant says that said paper described in said Exhibit E was collected at the places named in said exhibit respectively by and through the respective banks enumerated and set forth in said exhibit, but as to the exact time when any of the said items in said Exhibit E enumerated were paid and collected at the respective places at which they were paid and collected this defendant has no information or meansof knowledge.

A recapitulation and statement in explanation of the said three Exhibits C, D, & E and Complainant's Exhibit A is hereto attached, marked Exhibit F and made part of this answer.

And this defendant, further answering to the complainant's bill, and particularly to the interrogatories therein contained, says that as to the interrogatory whether the said sums in said account, Exhibit A, attached to complainant's bill, have been collected by the said The Fidelity National bank and by the said David Armstrong, and what portion thereof have been collected by or come into the hands of said bank and of said Armstrong, distin-
19 guishing which have been remitted to said Armstrong or been collected by said Armstrong since his appointment as receiver of said bank, this defendant has no information or means of knowledge by which he can give a more definite answer than as contained in the Exhibits C, D, & E, attached to this answer, or than as in this answer above set forth; and as to the interrogatory in the complaint whether the said contract therein mentioned hath been made by and between The Fidelity National bank and the complainant, this def't says that the contract between The Fidelity National bank and complainant is as hereinabove set forth, as evidenced by Exhibits A and B, hereto attached, and the course of business subsequent and pursuant thereto as particularly set forth in this answer; and this defendant denies that the contract under which the commercial paper described in the bill or any item thereof was endorsed to and received and held by the said Fidelity National bank was as set forth in the said bill, or hath been made as in said bill set forth and averred.

And, further answering, this defendant denies that the instruments or negotiable paper described in the complainant's bill, save and except those mentioned and described in Exhibits D & E, were held by the said Fidelity National bank for collection only and not as owners thereof, as averred in the complainant's bill, and defendant denies that the said instruments or negotiable paper or any of them, save and except those described in Exhibits D & E, hereto attached, were by any endorsement of the complainant or by the terms of any contract to be held by the said Fidelity National bank
20 for collection only and not as owner thereof, as averred in the bill of complainant; and defendant admits that the Fidelity National bank was to collect the commercial paper described in complainant's bill without charge for its services in collection, and was to remit all sums of money collected on the 1st, 11th, and 21st of each month, as averred in the complainant's bill and as averred in this answer; and this defendant denies each and every allegation of complainant's bill setting forth any contract or

terms as to the collection of the said commercial paper or any of it, otherwise than as specifically described in this answer; and defendant denies that the sums of money which may have been collected upon the said commercial paper described in the complainant's bill came into the hands of the Fidelity National bank in trust, to be remitted to the complainant, and not as a portion of the funds of the Fidelity National bank for its general purpose-; but defendant avers that all such sums as came into the hands of the Fidelity National bank, whether collected upon cash paper or upon time paper, on or before the 20th day of June, 1887, became and were part of the funds of the said Fidelity National bank for its general purposes;

21 and defendant denies that any sums of money that were collected upon any of the commercial paper described in the complainant's bill *or* are held by the said Fidelity National bank or by this defendant as separate funds and property of the complainant and not as part of the general funds of the said Fidelity National bank or of said defendant for the general creditors of said bank, as averred in said bill; and this defendant denies that the said funds or any of them, whether the proceeds of the pieces of commercial paper described in Exhibits "C," "D," & "E," were held by this defendant in trust for the complainant, but avers that the proceeds of each and every one of said pieces of commercial paper enumerated in Exhibits "C," "D," & "E," and being all the commercial paper described in Complainant's Exhibit "A," were and are part of the funds of the Fidelity National bank for its general purpose- or of this defendant as receiver of said bank for the general creditors of said bank; and this defendant denies that he, the said defendant, David Armstrong, receiver, is bound to pay the same or any part thereof over upon the demand of the complainant.

All of which matters and things the said defendant is ready and willing to further maintain and prove as this honorable court shall direct, and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

W. B. BURNET,
E. W. KITTREDGE,
JOS. WILBY,
Defendant's Solicitors.

22 UNITED STATES OF AMERICA, }
Southern District of Ohio, Western Division. }

David Armstrong, being duly sworn, says that he is the receiver of the Fidelity National bank and the defendant in the above-entitled cause; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

DAVID ARMSTRONG.

Sworn to before me this 16th day of February, 1888.

JOHN E. BRUCE,
Notary Public, Hamilton County, Ohio. [SEAL.]

23 U. S. Depository.

The Fidelity National Bank.

Capital, $1,000,000.

Briggs Swift, president; E. L. Harper, vice-president; Ammi Baldwin, cashier; Benjamin E. Hopkins, ass't cashier.

CINCINNATI, 2, 12, 1887.

Com'l Nat. b'k, Philada., Pa.

GENTLEMEN: Enclosed herewith we hand you our last statement, showing us to be the second bank in Ohio in deposits in the tenth month of our existence. We should be pleased to serve you, and trust you will find it to your advantage to accept one of the following propositions:

No. 1. We will collect all items at par and allow 2½ % interest on daily balances, calculated monthly. We will remit any balance you have above $2,000 in New York draft, as you direct, or ship currency at your cost for expressage.

No. 2. Will collect at par all points west of Pennsylvania and remit the 1st, 11th, and 21st of each month.

24 No. 3. We will collect at par Ohio, Indiana, and Kentucky items and remit balance every Monday by draft on New York.

We do not charge for exchange on propositions No. 1, 2, and 3.

No. 4. Will collect Cincinnati items and remit daily at 40 cents per thousand, or 20 cents for $500 or less.

National banks not in a reserve city can count all they have with us as reserve.

Your early reply will oblige, respectfully yours,

E. L. HARPER, *V. P.*

Exhibit "A."

25 The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *Feb.* 18, 1887.

To Fidelity National bank, Cincinnati:

Yours of 16 inst. is received.

Respectfully, KNEEDLER,

For Cashier.

We accept your proposition #2 in your letter of the 12th inst., and—

I enclose for collection—

	For credit.	[In pencil:]
	7 08	Frankfort, Ind.
	5 20	Bay City.
	10	Memphis.
	18	St. Paul.
	111 40	Nashville.
[In pencil:]	164 90	N. O.
New R | C.	5 20	Alr.
Prop. No. 2.	689 84	Galveston.
	1,011 62	N | C.
	995 93	5 N. O.
	2,007 55	

Received Feb. 21, 1887; answered 21.

26 Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order."

All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

Exhibit "B."

Date of letter, Com'l, Phila.		Name of town items *was* on.	Date of Cr. & chg. by Fidelity.		To whom sent by Fidelity for Cr.	Amount.	State of the a/c of correspondence (date items *was* ch'g'd) on June 20th.
June	7	Connersville, Ind.	June	9	Citizens' bank, Connersville, Ind.	8 08	Cash rec'd 6, 13.
	"	Memphis, Tenn.	"	"	Bank of Com., Memphis, Tenn.	9 90	Cr. bal. always.
	"	New Orleans, La.	"	"	State Nat'l, New Orleans, La.	31 20	Cr. bal. always.
	"	Augusta, Ky.	"	"	Allen, H. & Co., Augusta, Ky.	97 25	Cr. bal. always.
	"	Knoxville, Tenn.	"	"	Mechanics' Nat'l, Knoxville, Tenn.	25 68	Cr. bal. always.
	"	Oshkosh, Wis.	"	"	Metropolitan " Chicago, Ills.	21 06	June 9, Cr. bal. 33,000.00. " 20, Dr. " 41,000.00.
	"	Iowa City	"	"	American " Kansas City, Mo.	481 29	June 9, Dr. bal. 21,000.00. " 20, " " 25,000.00.
	8	Bristol, Tenn.	"	10	Mechanics' " Knoxville, Tenn.	25 00	Cr. bal. always.
	"	Milwaukee, Wis.	"	"	First " Milwaukee, Wis.	40 63	Cr. bal. always.
	"	San Antonio, Tex.	"	"	Fifth " St. Louis, Mo.	496 97	Dr. bal. always; bank hands of rec'r.
	"	Council Bluffs, Ia.	"	"	Metropolitan " Chicago, Ill.	499 54	June 10, Cr. bal. 15,000.00. " 20, Dr. " 41,000.00.
	"	Helena, Mont.	"	"	" " " "	40 44	Ret'd 6, 16. See ch'ge.
	"	Grafton, W. Va.	"	"	United States " " "	765 23	Ret'd 6, 16. See ch'ge.
	"	Bristol, Tenn.	"	"	Mechanics' " Knoxville, Tenn.	341 61	Cr. bal. always.
	"	Schuyler	"	"	United States " Chicago, Ill.	500	June 10, Cr. bal. 1,600.00.
	"	Staunton	"	"	" " " "	768 90	" 20, Dr. bal. 766.35.
	9	Detroit, Mich.	"	11	Citz. sav. b'k, Detroit, Mch.	200	Cr. bal. always.
	"	Wabash, Ind.	"	"	Decatur Nat'l, Decatur, Ind.	72 86	June 11, Dr. bal. 763.99. " 20, Cr. " 16,000.00.
	"	Cattlesburg, Ky.	"	"	Cattlesburg " Cattlesburg, Ky.	26 26	Cash rec'd 6, 14.
	"	Omaha, Neb.	"	"	American " Kansas City, Mo.	59	June 11, Dr. bal. 13,000
	"	" "	"	"	" " " "	10	" 20, " " 25,000.00.
	"	Indianapolis, Ind.	"	"	Fletcher bank, Indianapolis	71 17	June 11, Cr. bal. 21,000.00. " 20, Dr. " 3,300.00.

Exhibit "C"—Continued.

Date of letter, Con'l, Phila.	Name of town items *was* on.	Date of Cr. & chg. by Fidelity.	To whom sent by Fidelity for Cr.	Amount.	State of the % of correspondence (date items *was* ch'g'd) on June 20th.
June 9	Indianapolis, Ind.	June 11	Indianapolis Nat'l, Indianapolis	253 00	Cr. bal. always.
"	Bay City, Mich.	" "	Euclid Ave. " Cleveland, O.	124 14	Cr. bal. always.
10	Indianapolis, Ind.	" 13	Indianapolis " Ind's, Ind.	135 23	Cr. bal. always.
"	Lexington, Mo.	" "	Fifth " St. Louis, Mo.	2 56	Ret'd 6, 16. See ch'ge.
"	Indianapolis, Ind.	" "	Fletcher's bank, Ind's, Ind.	56 73	June 13, Cr. bal. 20,000.00. " 20, Dr. bal. 3,300.00.
"	Omaha, Neb.	" "	American Nat'l, Kansas City, Mo.	643 70	June 13, Dr. bal. 16,000.00. " 20, Dr. " 25,000.00.
"	Kokomo, Ind.	" "	Direct. to Kokomo for remittances	6 30	Cash rec'd 6, 16.
"	St. Paul, Minn.	" "	Metropolitan Nat'l, Chicago, Ill.	10	June 13, Cr. bal. 36,000.00. " 20, Dr. bal. 41,000.00.
"	Owasso	" "	Commercial " Detroit, Mich.	125 55	June 13, Cr. bal. 4,000. " 20, " " 6,000.
"	East Saginaw, Mich.	" "	Preston bank, " "	236 22	June 13, Dr. bal. 389.92. " 20, Dr. bal. 30.19.
11	Springfield, Mo.	" 13	Fifth Nat'l, St. Louis, Mo.	40	Dr. bal. always; b'k in hands rec'r.
"	Denver, Colo.	" "	Metropolitan " Chicago, Ill.	100	June 13, Cr. bal. 6,000.00.
"	Iowa City	" "	" " " "	85 74	" 20, Dr. bal. 41,000.00.
"	Mexica, Texas	" "	Fifth " St. Louis, Mo.	298 26	Dr. bal. always; b'k in hands rec'r.
13	Knoxville, Tenn.	" 15	East. Tenn. " Knoxville, Tenn.	133 64	June 15, Cr. bal. 10,700.00. " 20, Dr. bal. 5,200.00.
"	Nashville, "	" "	First " Nashville, "	77 95	June 10, Dr. bal. 15,000.00. " 20, Dr. bal. 6,600.00.
"	Topeka, Kansas	" "	American " Kas. City, Mo.	15 55	June 15, Dr. bal. 22,000.00. " 20, " " 25,000

	"	Grand Rapids, Mich.	"	"	Old " G'd Rapids, Mich.		15	25	June 15, Cr. " 576.74. " 20, Cr. " 1,866.28.
	"	Lansing, "	"	"	Com'l " Detroit, "		72	20	June 15, Cr. bal. 900.00. " 20, Cr. " 6,000.00.
	"	Milwaukee, Wis.	"	"	Wisconsin F. & M. Ins. b'k, Mil., Wis.		17	81	Cr. bal. always.
	"	Indianapolis, Ind.	"	"	Fletcher's bank, Ind's, Ind.		17	10	June 15, Dr. bal. 2,000.00. " 20, " " 3,300.00.
	"	——, Tenn.	"	"	Mechanics' Nat'l b'k, Knoxville, Tenn.		100	05	Cr. bal. always.
	"	——, "	"	"	" " " " "		24	37	Cr. bal. always.
	"	——, "	"	"	East Tenn. " " " "		35		June 15, Cr. bal. 10,700.00. " 20, Dr. " 5,200.00.
	"	——, "	"	"	Mercantile b'k, Memphis, "		31	79	Cr. bal. always.
	"	——, "	"	"	First Nat'l b'k, Nashville, "		50	41	June 15, Dr. bal. 15,000.00. " 20, Dr. " 6,600.00.
	"	——, "	"	"	Mercantile " Memphis, "		300		Cr. bal. always.
	"	——, "	"	"	Mechanics' Nat'l " Knoxville, "		30	17	Cr. bal. always.
	"	——, Michigan	"	"	Fourth " " G'd Rapids, Mich.		38	54	June 15, Dr. bal. 918.26. " 20, Dr. " 1,779.67.
	"	——, "	"	"	Mer. & M'f'rs' " Detroit, "		364	30	Cr. bal. always.
	"	——, Minnesota	"	"	Metropolitan " " Chicago, Ill.		55	29	June 15, Cr. bal. 3,800.00. " 20, Dr. " 41,000.00.
	"	——, Iowa	"	"	Can't find to whom this was sent		32	43	
	"	——, Kansas	"	"	American Nat'l b'k, Kansas City, Mo.		589	34	June 15, Dr. bal. 22,000.00. " 20, " " 25,000.00.
	"	——, Nebraska	"	"	Metropolitan " " Chicago, Ill.		236	85	June 15, Cr. bal. 3,800.00. " 20, Dr. " 41,000.00.
	"	Ind., Richmond	"	"	Union " " Richmond, Ind.		113	80	Cr. bal. always.
	"	Nashville, Tenn.	"	"	First " " Nashville, Tenn.		37	95	June 15, Dr. bal. 15,000.00. " 20, " " 6,600.00.
	"	Dubuque, Iowa	"	"	Metropolitan " " Chicago, Ill.		741	12	June 15, Cr. " 3,800.00. " 20, Dr. " 41,000.00.
	"	Lincoln, Neb.	"	"	German " " Lincoln, Neb.		132	81	Cr. bal. always.
					Amount for'd		9,973	22	
28									
	(A)	Cont'd.			Amount bro't for'd		9,973	22	
June	14	Grand Rapids, Mich.	June	16	Old Nat'l b'k, Grand Rapids, Mch.		84	00	June 16, Cr. bal. 59.36. " 20, " " 1,866.28.

Exhibit "C"—Continued.

Date of letter, Com'l, Phila.	Name of town items *was* on.	Date of Cr. & chg. by Fidelity.	To whom sent by Fidelity for Cr.	Amount.	State of the % of correspondence (date items *was* ch'g'd) on June 20th.
June 14	Carthage, Mo.	June 16	Fifth Nat'l b'k, St. Louis, Mo.	5 10	Dr. bal. always; b'k in hands rec'r.
"	Columbia, Tenn.	" "	First " " Nashville, Tenn.	37 55	June 16, Dr. bal. 16,000.00. " 20, " " 6,600.00.
"	Cin'ti, O., ch'k Fidelity	" "	Ch'g'd to C. E. Potts & Co. % June 16	180 29	
"	Chattanooga, Tenn.	" "	City savings b'k, Chattanooga, Tenn.	131 17	Cr. bal. always.
"	Kansas City, Mo.	" "	American Nat'l " Kansas City, Mo.	82 80	June 16, Dr. bal. 14,000.00. " 20, " " 25,000.00.
"	New Orleans, La.	" "	State Nat. b'k, New Orleans, La.	148 97	Cr. bal. always.
"	Minneapolis, Minn.	" "	Wisconsin F. & M. Ins. b'k, Milwaukee	21	Cr. " "
"	Covington, Ky.	" "	Far. & Tra. Nat'l, Covington, Ky.	120	June 6, Cr. bal. 5,000. " 20, Dr. " 2,200.00.
"	Fort Worth, Texas	" "	Fifth " St. Louis, Mo.	255	Dr. bal. always; bank in hands rec'r.
"	Grand Rapids, Mich.	" "	Old " G'd Rapids, Mch.	990	June 16, Cr. bal. 59.36. " 20, " " 1,866.28.
15	Axtell, Neb.	" 17	American " Ka. City, Mo.	32 50	June 17, Dr. " 17,000.00. " 20, Dr. " 25,000.00.
"	Minneapolis, Minn.	" "	Wisconsin F. & M. b'k, Milwaukee	100 00	Cr. bal. always.
16	Lewisburg, Tenn.	" 18	First Nat'l b'k, Nashville, Tenn.	64 18	June 13, Dr. bal. 8,900.00. " 20, " " 6,600.00.
"	Ch'k	" "	Can't find who this is on	1 50	
"	Bay City, Mich.	" "	Euclid Ave. Nat'l b'k, Cleveland, O.	161 12	Cr. bal. always.
"	Carlisle, Ky.	" "	Far. & Tra. bank, Covington, Ky.	15 25	June 18, Cr. bal. 8,000.00. " 20, Dr. " 2,200.00.
"	Milwaukee, Wis.	" "	Milwaukee " Milwaukee	1,012 96	June 18, " " 1,901.81. " 20, " " 1,333.16.
17	St. Paul, Minn.	" 20	Metropolitan " Chicago, Ill.	45	Dr. bal. 41,000.00.

"	Indianapolis, Ind.	"	"	Fletcher's	"	Ind's, Ind.	33 98	" " 3,300.00.
"	Sterling	"	"	1st Nat'l	"	Kansas City	180 80	" " 4,260.00.
"	Minneapolis, Minn.	"	"	Wisconsin F. & M. b'k, Milwaukee			86 21	Cr. " always.
"	Texarkana	"	"	5th Nat. b'k, St. Louis, Mo.			130 81	Dr. bal. always; bank in hands receiver.
"	Huntington, Ind.	"	"	First	Nat'l b'k,	Huntington, Ind.	48 45	Cr. bal. $3,500.00.
18	Detroit, Mich.	"	"	Detroit	" "	Detroit, Mich.	44 83	Cr. bal. always.
"	St. Paul, Minn.	"	"	Metropolitan	" "	Chicago, Ill.	149 50	Dr. bal. 41,000.
"	Memphis, Tenn.	"	"	Bank of Commerce, Memphis, Tenn.			13 13	Cr. bal. always.
"	Bay City, Mich.	"	"	Euclid Ave.	Nat'l,	Cleveland, O.	7 80	" "
"	New Orleans, La.	"	"	Whitney	"	New Orleans, La.	26 00	" "
"	Burlingame, Ka.	"	"	Metropolitan	"	Chicago, Ill.	150	Ret'd 6, 20. See ch'ge.
"	Atchison, "	"	"	"	"	" "	1,000	Dr. bal. 41,000.00.
"	M. Vernon	"	"	Direct. to Jennings & Co. b'k for rem.			49 31	Cash rec'd 6, 22.
"	Milwaukee, Wis.	"	"	Milwaukee	Nat'l,	Mil., Wis.	297 15	Dr. bal. 1,333.16.
"	Kansas City, Mo.	"	"	First	"	Kansas City, Mo.	177 16	Dr. bal. 4,260.60.
"	Newport, Ky.	"	"	"	"	Newport, Ky.	7 30	Dr. bal. 969.86.

EXHIBIT D.

(B) *Items Treated by Fidelity as Collections Paid, Advised, & Credited % by Fidelity before Evening of June 20th*, 1887.

Date of letter, Com'l, Phila.	Name of town or payer.	Date of credit by Fid.	To whom sent by Fidelity for coll'n.	Am't.	State of % of correspondent on date of charge.
1887.					
May 17	Tompkins	June 9	Farmers' & Merchants' b'k, Attica, Ind.	37 77	June 9, Cr. bal. 522.41. " 20, Dr. " 74.50.
" 27	Bigley	" "	American Nat. " Kansas City, Mo.	352 00	June 9, Dr. bal. 23,000.00. " 20, " " 25,000.00.
April 20	Hoffman	" 13	Pomeroy " " Pomeroy, O.	24 00	June 13, Cr. bal. 2,200. " 20, " " 893.26.
May 26	Schwenbrick	" "	State " " New Orleans	177 21	Cr. bal. always.
" 27	Ernst	" 14	Fifth " " St. Louis, Mo.	140 00	Dr. bal. always; bank hands of rec'r.
June 2	Lindsey	" "	Louisville B'k'g Co., Louisville, Ky.	141 60	June 14, Cr. bal. 3,900.00. " 20, Dr. " 10,060.00.
" 10	Ross	" 18	" " " " "	18 75	June 18, Dr. " 1,600. " 20, " " 10,000.
			Total	891 33	

Exhibit E.

(C) *Items Treated by Fidelity as Collections Paid before Failure, but Not Credited on Books of Fidelity until after June 20th, 1887.*

			Date of credit by correspondent of Fidelity Nat'l b'k.				
June	10	Leavenworth, Ks.	June	18	American Nat'l b'k, Kansas City, Mo.	22 75	Dr. bal. 25,000.00.
"	"	" "	"	18	" " " " " "	28 00	" " "
"	"	Hartz, Rock Island, Ills.	"	18	Metropolitan " " Chicago, Ill.	86 06	" " 41,000.00.
"	2	Wright, Louisville, Ky.	"	18	Louisville B'k'g Co., Louisville, Ky.	155 10	" " 10,000.00.
"	"	Sedalia, Mo., Wahemsley	"	20	5th Nat'l b'k, St. Louis, Mo.	279 30	
"	10	Merzbacker, Marshall, Texas.	"	20	" " " " " "	16 20	Dr. bal. 25,000.00.
"	"	Kellar, Houston	"	20	" " " " " "	56 25	Bank in hands rec'r.
"	2	Bigley, Kansas City, Mo.	"	20	American " " Ks. City, Mo.	372 46	Dr. bal. 25,000.00.
"	8	Deitz, Louisville, Ky.	"	20	Louisville B'k'g Co., Louisville, Ky.	459 96	" " 10,000.00.
"	"	Meyer, Omaha, Neb.	"	21	American Nat'l b'k, Ks. City, Mo.	103 35	" " 25,000.00.
"	10	Olney, Clinton, Iowa	"	22	Metropolitan " " Chicago, Ill.	173 08	" " 41,000.00.
"	8	Bateman, Roadhouse, Ills.	"	22	" " " " " "	33 25	" " 41,000.00.
					Total	1,785 76	

30 *Recapitulation.*

Total of items rec'd by Fidelity and credited on receipt as "cash," Schedule C			15,864 04
List of items credited on receipts as "cash," but afterwards returned unpaid, and, as they are included in Schedule C, must be deducted from the total:			
June 10. Lexington, Mo., ret'd June 16 & ch'ge back	2 56		
" 8. Helena, Mont., " " " " " "	40 44		
" " Grafton, W. Va., " " " " " "	765 23		
" 18. Burlingame, " " 20 " " "	150 00		
" " " " " " " pro. fees on $150.00	1 35		
Charge of Fidelity on June 15, pro. fees	1 54		
" " " " " 16, ret'd Sterminger, credited June 6th, '87	23 35		
" " " " " 20, ret'd Sheridan, credited May 26, '87	48 88		
" " " " " " error in Cr. of May 12, '87	7 65		
" " " " " " error in Cr. of May 13, '87	63 90		
" " " " " " error in Cr. of June 6, '87	60 23		
			1,167 13
Items credited on receipt balance			$14,696 91
Collection that Fidelity charged in error on May 19th, '87, should not have been charged, and hence should be included in balance on June 20th, 1887			81 20
Balance Schedule C			14,696 91
" " D			891 33
" " E			1,785 76
Total due Com'l Nat'l bank, Phila., as shown by books of Fidelity Nat'l b'k			17,455 20

31 And afterwards, to wit, on the 21st day of February, A. D. 1888, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Journal X, p. 543.

The decree *pro confesso* heretofore entered is now, upon motion of defendant, set aside, and, the defendant having filed his answer, it is ordered that the same stand as his answer herein.

And afterwards, to wit, on the 21st day of March, A. D. 1888, the following replication was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Replication.

In the Circuit Court of the United States within and for the Southern District of Ohio and the Western Division Thereof.

THE COMMERCIAL NATIONAL BANK OF PENNSYLVANIA, Complainant, *vs.* DAVID ARMSTRONG, Receiver of the Fidelity National Bank of Cincinnati, Respondent. } In Equity.

The replication of the Commercial National Bank of Pennsylvania to the answer of David Armstrong.

This complainant, saving and reserving to itself all exceptions which might by it be taken to the answer of said David Armstrong, for replication thereunto sayeth that its bill is true in manner and form as therein alleged, and that the answer of defendant is
32 uncertain, untrue, and insufficient, and that all the matters and things therein alleged by this complainant to be replied unto, confessed and avoided, are untrue; all of which this complainant is ready to prove as this honorable court shall direct.

And this complainant prays as by its bill it hath already prayed.

HARMON, COLSTON, GOLDSMITH & HOADLY,
Solicitors for Complainant.

GEO. HOADLY, *Of Counsel.*

And afterwards, to wit, on the 26th day of March, A. D. 1888, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Journal X, p. 570.

Upon motion of the complainant and for good cause shown, it is ordered that a commission issue from this court to William J. Smyth, commanding him that he cause to appear before him and take testimony of such persons as may be required by either of the parties to this cause, at his office, No. 400 Chestnut street, at Philadelphia, in the Commonwealth of Pennsylvania, and the said William J. Smyth is hereby appointed special examiner in this cause under and by virtue of the powers vested in this court by the rules for proceeding in equity therein provided.

And afterwards, to wit, on the 19th day of April, A. D. 1888, the following deposition of Edwin P. Graham and others was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Depositions of Edwin P. Graham and 2 Others.

33 THE UNITED STATES OF AMERICA, *Southern District of Ohio, Western Division,* } ss:

The President of the United States of America to William J. Smythe, No. 400 Chestnut St., Philadelphia, Pa., Greeting:

Know ye that we, in confidence of your prudence and fidelity, have appointed you special examiner and by these presents to give you (or any two or more of you) full power and authority diligently to examine upon his (or their) respective corporal oath (or affirmation), before you to be taken, sundry persons, as witnesses on the part of either party in a certain cause now pending undetermined in the circuit court of the United States of America for the western division of the southern district of Ohio, in the sixth circuit, wherein The Commercial National Bank of Pennsylvania is plaintiff and David Armstrong, receiver of the Fidelity National bank, —, touching the premises (or, if interrogatories are annexed, on the interrogatories hereunto annexed).

And we do further empower you to examine on the same behalf and in like manner any other person or persons who may be produced as witnesses before you.

And we do hereby require you (and any two or more of you), before whom such testimony may be taken, to reduce the same to writing and to close it up under your hand and seal, directed to Benjamin R. Cowen, clerk of the circuit court of the United States, southern district of Ohio, western division, Cincinnati, Ohio; and that you return the same, when executed as above directed, annexed to this writ, with the title of the cause indorsed on the envelope of the commission, into the said circuit court, before the judge (or judges) thereof, with all convenient speed.

Witness the Honorable Samuel F. Miller, associate [SEAL.] justice of the Supreme Court of the United States, at Cincinnati, in the said division and district, this 26 day of March, A. D. 1888, and in the 112 year of the Independence of the United States of America.

Attest:

B. R. COWEN,
Clerk U. S. Circuit Court, S. D. O.,
By ROB'T C. GEORGI, *Deputy.*

34 The United States Circuit Court, Southern District of Ohio, Western Division.

THE COMMERCIAL NATIONAL BANK OF PENNSYLVANIA, Plaintiff,
vs.
DAVID ARMSTRONG, Receiver of the Fidelity National Bank, Defendant.

The depositions of Edwin P. Graham, William H. Kneedler, and Frank Anderman, certain witnesses in a cause now pending and undetermined in the circuit court of the United States of America for the western division of the southern district of Ohio, in the

sixth circuit, wherein The Commercial National Bank of Pennsylvania is plaintiff and David Armstrong, receiver of the Fidelity National bank, is defendant, taken before me, William J. Smyth, a special examiner, duly appointed and empowered for said purpose and in pursuance of my said appointment, on the 13th day of April, A. D. 1888, at the Commercial National bank, No. 314 Chestnut street, Philadelphia, Pennsylvania, on the part of the plaintiff, and to be read in evidence at the trial of the above-entitled cause.

Present: Geo. Hoadly, Jr., Esq., Charles W. Sparhawk, Esq., in behalf of plaintiff; Jos. Wilby, Esq., in behalf of defendant.

Mr. John Weaver, having been appointed by me to act as stenographer and clerk, was by me then duly sworn to faithfully, fa irly, and impartially perform his duties as such stenographer and clerk in the taking of the deposition- as aforesaid.

35 It was stipulated by and between the counsel for The Commercial National Bank of Pennsylvania, complainant, and counsel for David Armstrong, receiver, respondent herein, that the depositions taken under the commission heretofore issued herein and attached hereto shall be taken in short-hand and may be written out on the typewriter and signed by the witnesses.

Attest: W. J. SMYTH, [SEAL.]
Special Examiner.

And the depositions were proceeded with as follows:

EDWIN P. GRAHAM, a witness called on behalf of the plaintiff herein, and residing at Haddonfield, N. J., more than one hundred miles from the place where this cause is to be tried, being duly cautioned and affirmed to tell the whole truth and being carefully examined, deposes and says as follows:

Examined by Mr. HOADLY:

Q. Please state your name, residence, and occupation.

A. Edwin P. Graham. I reside at Haddonfield, New Jersey. I am cashier of The Commercial National Bank of Pennsylvania.

Q. The Commercial National Bank of Pennsylvania, of which you are cashier, is, I believe, the plaintiff in this case?

A. Yes, sir.

Q. Please state whether or not you received from the Fidelity National Bank of Cincinnati a certain letter bearing date the 12th of February, 1887, and which I hand you herewith.

Paper handed witness.

A. Signed by E. L. Harper?—yes, sir.

36 Q. Please attach that letter to your deposition and mark the same Exhibit No. 1.

Letter marked Exhibit No. 1 and attached hereto.

Q. Please state whether or not, prior to the receipt of that letter, the Commercial National Bank of Pennsylvania had had any transactions with the Fidelity National Bank of Cincinnati.

A. No transactions. We had frequently received circulars of that character before this, but had had no transactions with them.

Q. Please state whether or not you replied to that letter.

A. We did; at least our general book-keeper replied to it, I think, at my suggestion.

Q. Please state whether or not the paper attached to the answer of David Armstrong, receiver in this case, and marked Exhibit B thereto, is the reply sent by the Commercial National Bank of Pennsylvania to such circular letters.

Papers handed to witness.

A. Yes, sir; I made a mistake in saying that it was our general book-keeper who wrote; I see it was our corresponding clerk.

Q. Please state whether or not the Commercial National Bank of Pennsylvania thereafter acted in accordance with the proposition No. 2 contained in the letter of February 12 and the reply thereto contained in the letter marked Exhibit B, attached to respondent's answer.

Counsel for respondent objects on the ground of incompetency; as to how they acted will appear by the transactions
37 as they are reported and recorded on the books of the bank and such correspondence as may have passed between the parties. Witness's answer would be an inference or argument and not a statement of fact.

A. Yes, sir.

Q. Please state whether or not you forwarded them items of commercial paper thereafter and up to the 20th day of June, 1887.

A. Yes, sir.

Q. Please state whether or not you were furnished by the Fidelity National Bank of Cincinnati with a stamp for the purpose of endorsing the paper to be sent to them for collection.

A. Yes, sir.

Q. Can you produce that stamp?

A. Yes, sir.

Q. Will you please do so and take an impression thereof and attach the same to your deposition as Exhibit No. 2?

Witness produces rubber stamp and makes an impression thereof on a sheet of paper, which is marked Exhibit No. 2 and attached hereto.

Counsel for respondent objects to the question and to the stamp or impression thereof as evidence on the ground that it is incompetent and irrelevant.

Q. Please state whether or not you have examined the accounts attached to the answer of the respondent in this case, and whether the same are correct.

A. I have been sick for a couple of weeks. I handed it to our corresponding clerk to examine and he reported, I think, that, with two exceptions, it was correct.

Counsel for the respondent objects to the question and
38 answer on the ground that they are incompetent; that the answer is hearsay, so far as it appears.

Q. Please state whether or not the Fidelity National Bank of Cincinnati remitted to the Commercial National Bank of Pennsylvania on the 1st, 11th, and 21st days of each month.

A. They professed to do so. I cannot tell exactly without reference to their letters. Our corresponding clerk would be more competent to testify as to that. I believe the accounts never were reconciled. They professed to remit on those days, but I do not think the balances ever agreed, on account of small matters that could not be reconciled at the time, which is, of course, the habit of a great many banks. I would further state that our general bookkeeper wrote to them frequently for a reconcilement, but never got any satisfactory reply, and he waited for the next remittances to make it right.

Q. Please state whether the Fidelity National Bank of Cincinnati ever remitted to the Commercial National Bank of Pennsylvania at any other time than on the 1st, 11th, and 21st days of that month.

A. No, sir.

Q. Please state whether the Commercial National Bank of Pennsylvania ever drew upon the Fidelity National Bank of Cincinnati for any paper transmitted by it to the Fidelity National bank.

Counsel for respondent objects to the question both as incompetent and as to the form.

A. No, sir.

Q. Can you produce letters of the Fidelity National bank
39 enclosing remittances?

A. I think I can. I will have them hunted for, and if found will attach them.

Q. Please state whether or not you had any further correspondence with the Fidelity National Bank of Cincinnati on the subject of the proposition contained in the circular letter of February 12 and your answer thereto.

A. I think we had. My impression is we had.

Q. If so, please produce the correspondence. State whether or not that is it.

Witness handed letter.

A. Yes, sir; that is it.

Q. Please attach that to your deposition and mark the same Exhibit No. 3.

Letter marked Exhibit # 3 and attached hereto.

Q. Please state whether or not you received from the Fidelity National bank advices of the collection of the items sent to them.

Counsel for respondent objects as incompetent, as the letters of advices would be the best evidence of the fact and their contents.

A. Frequently.

Q. Please state whether the papers now handed you are such advices of collection.

Ten postal cards handed witness.

A. Yes, sir.

Q. Please attach them to your deposition, marked Exhibit No. 4.

40 Postal cards marked Exhibit No. 4 and attached hereto.

It is stipulated and agreed by and between counsel for complainant and respondent that each and every item mentioned and set forth in Exhibit- C, D, & E, attached to respondent's answer, were transmitted by the complainant to and received by the respondent.

It is also stipulated that the items in Exhibit F, attached to respondent's answer, amounting to the total of $1,167.13, have been returned by the Fidelity National bank to the complainant bank and received by the complainant bank as stated in that exhibit.

Attest: W. J. SMYTH, [SEAL.]
Special Examiner.

Q. I'll ask you, Mr. Graham, whether the stamp that was furnished by the Fidelity National bank for the purpose of making endorsements was actually used by the Commercial National bank on paper transmitted to the Fidelity National bank.

Counsel for respondent objects.

A. At all times.

Q. Were any of these items transmitted by the Commercial National Bank of Pennsylvania to the Fidelity National Bank of Cincinnati endorsed in any other manner?

A. No, sir; not to my knowledge.

Q. I'll ask you whether there was ever any other arrange-
41 ment with respect to the transmission of paper by the Commercial National bank to the Fidelity National bank than as above stated in the circular letter of February 12th.

Counsel for respondent objects as incomptent, as leading, and as calling for a statement of an inference and conclusion.

A. No, sir.

Q. I'll ask you whether it was ever considered that paper transmitted by the Commercial National bank to the Fidelity National bank was to be entered upon a deposit account of the Commercial National bank with the Fidelity National bank.

Counsel for respondent objects as incompetent.

A. No, sir.

Q. I will ask you whether it was ever the intention of the Commercial National bank to part with the title to paper transmitted by it to the Fidelity National bank.

Counsel for respondent objects as incompetent.

A. No, sir.

Q. I will ask you whether any of the items transmitted by the Commercial National bank to the Fidelity National bank were sold by the Commercial National bank to the Fidelity National bank.

Counsel for respondent objects as incompetent.

A. No, sir.

Q. I will ask you whether or not your understanding in accepting the proposition No. 2 in the circular letter of February 12th and in all subsequent dealings with the Fidelity National bank was that the account was open, or an account for collection and remittance.

42 Counsel for respondent objects as incompetent and leading.

A. Yes, sir; that was our understanding.

Q. I'll ask you what your understanding was as to the nature of the arrangement between the Commercial National Bank of Pennsylvania and the Fidelity National Bank of Cincinnati created by the circular letter of February 12, 1887, which is marked Exhibit No. 2, attached to your deposition, and the answer thereto.

Counsel for respondent objects as incompetent and irrelevant.

A. My understanding was that the balances were to be remitted on the 1st, 11th, and 21st days of the month—three times each month.

Q. I will direct your attention to the question as to what your understanding was as to where the title to that paper was to be.

Counsel for respondent objects as incompetent, as suggesting the answer, and as leading.

A. I understood that the title was to be in the Commercial National Bank of Pennsylvania.

Q. I will ask you by whose authority this arrangement was made.

Counsel for respondent objects as incompetent and irrelevant.

A. I gave the authority.

Q. I will ask you whether such arrangement was made by authority of the directors or of any one excepting yourself.

Counsel for respondent objects as incompetent and leading.

43 A. No, sir.

Cross-examined by Mr. WILBY:

Q. Please examine the letters with the heading of the Commercial National Bank of Pennsylvania, marked Respondent's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13, and state whether or not they are letters that were sent by the Commercial National Bank of Pennsylvania to the Fidelity National Bank of Cincinnati upon the dates that they purport to bear.

Letters handed witness.

A. Yes, sir.

Q. Will you attach them to your deposition, marked Respondent's Exhibits 1 to 13, inclusive?

Letters marked Respondent's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 11, 12, 13 and attached hereto.

Q. In whose handwriting, if you know, are the blue figures and writing in these letters?

A. In the handwriting of Mr. Kneedler, our corresponding clerk.

A. Is he your corresponding clerk now?

A. Yes, sir.

Q. And was during all the period covered by these transactions between your bank and the Fidelity National bank?

A. Yes, sir.

Q. I call your attention to the letter dated April 5, being
44 Respondent's Exhibit No. 2, in connection with Respondents' Exhibit 6, and ask you in whose handwriting the footing on Respondent's Exhibit # 6 is and the line drawn just above the footing.

A. Mr. Kneedler's.

Q. And explain, if you can, how it is that the footing is made to the items on Respondent's Exhibit 6 and is not made to the items on Respondent's Exhibit 2.

A. I presume these are time matters.

Q. These on Respondent's Exhibit 2?

A. Yes; they are time matters; not matured, but sent out for collection; the others are cash.

Q. By cash items you mean——

A. Whatever is taken for cash we give credit for, and those items are always footed up when sent out.

Q. And in your dealings with the Fidelity National bank during the time that we are concerned with the cash items that were to be credited at once upon receipt were footed up, whereas the time items were not footed up?

A. Yes, sir; that is the idea.

Q. And that is, so far as you know, the uniform course of your business with the Fidelity National bank?

A. Yes, sir.

Q. And the uniform course of your business in keeping your account with the Fidelity National bank?

A. Yes, sir.

Q. Then, if I understand you, in your statement as to the business between the Commercial National bank and the Fidelity
45 National bank in this matter the cash items which are footed were to be credited as of the date when received by the Fidelity National bank and you were to get credit for them?

A. Yes, sir.

Q. When did you get credit for the time items?

A. Whenever they advised us of them.

Q. Please examine the postal cards which were introduced by your counsel in your examination-in-chief, now shown you, being

dated June 10, 1887, June 20, 1887, June 6, 1887, June 15, 1887, June 17, 1887, June 15, 1887, and June 13, 1887, and state if you know what class of items of the two classes you have described these represent, as to the advices that they contain in them.

A. This. If you read the postals it says: We credit this in yours of the 12th. Presumably they are collections, but it is a possible thing that the cash items may have been advised in the same manner. There is no rule about —; generally these would be for collection.

Q. What do the figures upon the left hand of these postal cards mean—on the one June 13—4.20 and 5.26?

A. That means fourth month, twentieth, and fifth month, twenty-sixth—the date of our letters.

Q. Do you mean that they indicate the date of your letters remitting the items or transmitting them?

A. Yes, sir; our letter of the fourth month, twentieth, contained that item.

Q. And they were not advised to you until some time subsequently, when they were advised by these postals?

46 A. Upon receipt of that postal, of course we would credit the party here and charge the Fidelity bank.

Q. What, if any, advices—by postal, letter, or otherwise—did you receive from the Fidelity bank as to the cash items when they were received by them, or did you receive any advice?

A. I don't know that we would receive any advice of a cash item.

Q. You don't know of any?

A. I may not be competent to answer that question. They would advise frequently. For instance, if a sight draft is taken for cash, although it is taken as cash, yet the bank to whom it is sent considered themselves in duty bound to advise, as it might possibly not be paid, but ordinarily we didn't expect advices of anything but the time items which were maturing.

Q. Then, as a rule, the cash items were not advised to you?

A. As a rule, no.

Q. And it is true as to the bulk of the items, if not all the items, contained in Exhibit C attached to respondent's answer?

A. The cash items would be advised very likely in this way: "We received your letter with its enclosures."

Q. But no subsequent advices would be sent as to when it was collected?

A. No, sir; I don't think so.

Q. Then, if I understand you, sight items or cash items were credited when received and their receipt was simply advised to you?

A. Yes.

Q. Whereas the items, such as are contained in the postals and such as are contained in Exhibit D & E, attached to respond-

47 ent's answer, to which I now call your attention, were advised when collected to you by advices such as are contained in the postals which have been put in evidence?

A. Yes.

Q. You have spoken, Mr. Graham, of receiving remittances from

the Fidelity National bank on the 1st, 11th, and 21st days of each month. Didn't you receive with each such remittance a statement of the account as it then stood on each occasion between your bank and the Fidelity bank showing that balance which was remitted?

A. That I cannot tell. My impression is that we did not unless we wrote for a reconcilement of the account.

Q. What officer or clerk in your bank had charge of the matter and would be likely to know where such accounts would be?

A. Our general book-keeper, Mr. Clifford Pierce, had charge of that, but he is now in Sioux City, Iowa.

Q. You cannot state of your own knowledge whether they were received or not?

A. No, sir.

Q. Did you ever examine any such accounts?

A. I have seen them—I think I have. I think Mr. Pierce has shown them to me—some of them.

Q. Have you got any of them that you can produce now?

A. Quite likely. I really can't say, though.

Q. May I trouble you to make a search for them?

A. Yes, sir. You want all the accounts current that we can find?

Q. Yes.

48 A. I will hunt for them.

Q. You have produced a stamp here as having been sent to you by the Fidelity National bank. Do you know, of your own knowledge, when that stamp was sent to you and where it came from when it was sent?

A. Yes. I can't tell the exact date of it, but I know it came in a box from the Fidelity National Bank of Cincinnati.

Q. Do you know when?

A. I can't tell the exact date, but it was shortly after the account was opened. I see that it was made in Cincinnati by the brass plate on the side of it.

Q. That is all your personal knowledge about it?

A. Yes; it was shown to me when it came.

Q. Did you affix it or was it part of your duty to affix it or stamp it upon the paper sent out?

A. Not my personal duty—Mr. Kneedler did that.

Q. Then you have no personal knowledge as to what part the stamp played in your business?

A. I know we put it on. I knew we had it, and it was used.

Q. Did Mr. Kneedler conduct all the correspondence between the Fidelity National bank and this bank?

A. Yes, sir; if he was here. That is his position.

Q. Do you know whether or not, Mr. Graham, all your correspondence covering the period we have been asking about with the Fidelity National bank was on letter-heads like those that have been shown you—the 13 exhibits marked 1 to 13, inclusive?

A. Yes, sir; I think so. We have some smaller heads that we use at times, but these are the general forms we use.

49 Q. Especially for remitting items?

A. Yes, sir.

Q. Have you got and can you procure any letters or postals, such as you have spoken of, which came from the Fidelity National bank simply advising of receipt of cash items?

A. I presume it was generally on a postal.

Q. Have you any of these postals?

A. Yes; I presume so.

And now, at 1.30 p. m., the meeting is adjourned until 4 p. m.

Attest: W. J. SMYTH. [SEAL.]

And now, at 4 p. m., all parties being present, the taking of the testimony is resumed.

Cross-examination of Mr. GRAHAM continued by Mr. WILBY:

Q. Mr. Graham, have you, during the adjournment, found the postal cards advising of the credit of cash items about which I was asking you?

A. Yes, sir; they are the receipts of letters, acknowledgments of our letters.

Q. Will you make these postals that you have produced part of your deposition, marked Respondent's Exhibits 14 to 20, inclusive?

A. Yes, sir.

Postal cards marked Respondent's Exhibits 14, 15, 16, 17, 18, 19, and 20 attached hereto.

50 Q. These are not all, you say?

A. No, sir.

Q. Do you say that the others covering the entire period that you do not find, would be like these in form?

A. Yes, sir; these are sufficient to show the general tenor of their advices.

Q. And are like these covering the period and for the items that are described in the suit which you have brought?

A. Yes, sir.

Q. Have you found during the adjournment and will you now produce the accounts rendered to you by the Fidelity National bank at the various times, on the 1st, 11th, and 21st days of each month, during the period of your business relations with them?

A. Yes; and I produce them; but I do not know whether they cover the whole period or not; some are dated and some are not dated.

Q. Do these nine such accounts that you have produced constitute all of the accounts between the Fidelity National bank and your bank that were sent to you by the Fidelity National bank, that you can find?

A. Yes, sir; all that we can find.

Q. You don't know but there may have been others sent?

A. There may have been others; yes, sir.

Q. And these accompanied each remittance when it came?

A. Yes, sir; after being requested to do so. That is only what I understood from our clerk.

Q. Will you attach these to your deposition and mark them Respondent's Exhibits 21 to 29, inclusive.

51 Accounts marked Respondent's Exhibits 21, 22, 23, 24, 25, 26, 27, 28, and 29, attached hereto.

Q. Let me call your attention to the way these were made out, Mr. Graham—any one will serve my purpose. Let me, for instance, call your attention to Exhibit 21, and to the credit side of the account, as shown in that exhibit. What do the letters "L," on the left of the credit column, refer to? I notice certain of the items are marked "L."

A. I judge it means letter.

Q. And what do the dates opposite on the same line mean?

A. That was the date of our letter.

Q. Now, what do the figures in the left hand of the credit column in place of the letter "L," which I notice occur opposite some of the items—what do they indicate?

A. That I cannot say.

Q. Who had charge in your bank of the receipt of these accounts and the business of reconciling them with your books?

A. Mr. Clifford Pierce.

Q. Is he in the bank now?

A. No, sir; he is at Sioux City.

Q. What I want to get at, and perhaps you know, is whether this account and the way it is made out as we see it here does not include on its face by the difference of entry of the items—some with "L" and the date opposite, and some without "L," but with simply the date—a distinction between the two classes of items you have described in your testimony this morning—that is to say, some were cash items, which were credited at once on the date of their

52 receipt, whereas others were not credited until afterwards—until they were paid.

A. That I cannot say.

Q. Mr. Pierce, no doubt, could?

A. Oh, yes; Mr. Pierce, and in fact the present corresponding clerk could give you some information about that.

Q. Is he here now?

A. Yes, sir.

It is stipulated and agreed by and between the parties hereto that the books of The Commercial National Bank, the complainant, would show that all sight or cash items transmitted by the complainant bank to the Fidelity National bank, including the sight or cash items enumerated in Exhibit C, attached to respondent's answer, were entered on and as of the date of their transmission to the Fidelity National bank on the foreign cash item book of the complainant bank, and were from such entries in said book posted into the general account of the Fidelity National bank on the books of the complainant bank as of such date of transmission.

It is further stipulated and agreed that the time items transmitted by the complainant bank to the Fidelity bank during the business

relations between the complainant bank and the Fidelity National bank and including the time items enumerated and described in Exhibits D & E, attached to respondent's answer herein, were entered on the foreign-collection register on the dates when they were transmitted respectively to the Fidelity National bank, and were not entered upon the general account of the Fidelity National bank upon the books of the complainant bank until advice was received from
53 the said Fidelity National bank that such time items had been collected; that sight or cash items above referred to were charged up to the Fidelity National bank by the complainant bank on the books of the complainant bank in the manner above described on and as of the date when they were transmitted to the Fidelity National bank, and the time items were not charged up to the Fidelity National bank on its general account on the books of the complainant bank until they were advised and reported collected as above stated; and it is further stipulated and agreed that the original books or entries or copies thereof, either of books of original entry or of any other ledger or other books of account into which the same may have been posted, are hereby dispensed with, and this stipulation is received in lieu thereof, subject to all objection otherwise as to competency, but waiving the production and offering of the books or entries themselves.

Attest: W. J. SMYTH. [L. S.]
Special Examiner.

Redirect examination of Mr. GRAHAM:

By Mr. HOADLEY:

Q. Mr. Graham, the sight paper which was sent to the Fidelity National bank by the Commercial National bank was, if I understand aright, charged to the Fidelity bank at the time it was sent? I will ask you why it was that it was charged to the Fidelity National bank as of that day.

Counsel for respondent objects as incompetent and irrelevant.

A. We could never have settled our work for the day unless it was so charged. If we credit our depositors with the amount
54 of their deposit, of course we have to charge it to the bank to whom we send such items. Upon the principal of bookkeeping every credit must have a debit, and *vice versa*.

Q. I will ask you whether or not in so charging these items to the Fidelity National bank it was intended or understood that the Fidelity National bank thereupon became indebted to the Commercial National bank in so much money.

Counsel for respondent objects as incompetent, irrelevant, and also as leading.

A. We so understood it.

By Mr. SPARHAWK:

Q. Was this indebtedness of the same nature as it would be if the items had been sent to a bank with whom you kept a regular deposit

account, or would it appear as the same entry where you had sent an item to a bank with whom you had no account but simply had transmitted for collection?

Counsel for respondent objects on the ground of incompetency, irrelevancy, and also as leading.

A. I don't know what you mean.

Q. In your answer to the last question you have stated that you considered the Fidelity National bank as indebted to you for the amount of the transmission. Now, what we desire to know is whether the word "indebted" has the same significance where you sent an item to a bank with whom you kept a regular deposit account or where you sent it simply for collection. Is or is not a bank to whom you send an item for collection indebted to you for the amount of such collection?

Counsel for respondent objects as incompetent and irrelevant.

55 A. You say keeping a deposit account. We never kept a deposit account there.

A. I mean is or is not a bank to whom you send an item for collection indebted to you for the amount of such collection?

Objected to by counsel for respondent.

A. Oh, yes, sir.

Q. Does the indebtedness of the Fidelity National bank differ in any way from that last stated?

Objected to as incompetent, irrelevant, and leading.

A. No, sir.

By Mr. HOADLY:

Q. In debiting the Fidelity National bank with the amount of this sight paper transmitted for collection did you or did you not thereby understand that the Fidelity National bank thereupon became absolutely indebted to you in the amount transmitted and debited to them?

Counsel for respondent objects as incompetent, containing an assumption, irrelevant, and as suggesting the answer.

A. I so understood it.

By Mr. SPARHAWK:

Q. Mr. Graham, what is the custom between banks in regard to entries where items are sent out for collection or for any other purpose? Are there any different class of entries other than debit and credit?

56 Counsel for respondent objects as incompetent.

A. No, sir.

Q. How long have you been a bank book-keeper, Mr. Graham?

A. I have been in this bank since the year 1855.

Q. What positions have you filled in this bank?

A. I have filled every position in this bank except president.

Q. Are you, then, perfectly familiar with the book-keeping of banks and the system of entries employed in banks?

Counsel for respondent objects to the form of question.

A. I am, sir.

Q. Have you ever been advised by your solicitor as to the difference in meaning of the specific endorsement of a bankable item where the words "for collection" are employed or left out—that is, as to whether you are not in a different position where the words "for collection" are used than you are when they are not used?

Objected to be counsel for respondent as incompetent, irrelevant; also as leading and as suggesting the answer and as indulging in argument at an improper time and at an improper place.

A. Yes, sir; we were informed that the positions were different.

Q. Was or was not that advice given to you before this relation between your bank and the Fidelity National bank commenced?

Counsel for respondent objects as incompetent, irrelevant, and leading.

A. I don't quite understand.

Q. Was such advice given you by your solicitor before you had any business transactions with the Fidelity National bank?

57 Objected to.

A. Oh, yes, sir; before.

Q. What was the rule as laid down to you where the items were sent stamped "for collection"—that is, whose property were they?

Counsel for respondent objects as incompetent, irrelevant, and improper redirect examination.

Q. Were they your property or the property of the correspondent bank?

Objected to.

A. They were our property.

Q. Was or was not the bases upon which you entered into the arrangement with the Fidelity National bank one of "for collection" only?

Counsel for respondent objects as incompetent, irrelevant, and leading.

A. Yes, sir.

E. P. GRAHAM.

Duly affirmed and subscribed to before me—

W. J. SMYTHE, [L. S.]
Special Examiner.

58 WILLIAM H. KNEEDLER, a witness called on behalf of the plaintiff herein and residing at North Wales, Penna., more than one hundred miles from the place where this cause is to be tried, being duly cautioned and sworn to tell the whole truth and being carefully examined, deposes and says as follows:

By Mr. HOADLY:

Q. State your name, residence, and occupation.

A. William H. Kneedler. I live at North Wales, Penna. I am corresponding clerk of the Commercial National Bank of Penna.

Q. How long have you been corresponding clerk for the Commercial National Bank of Pennsylvania?

A. Since November, 1886.

Q. Were you corresponding clerk of the Commercial National Bank of Pennsylvania during a period from February 12th, 1887, to June 21st, 1887?

A. Yes, sir.

Q. What were your duties as such corresponding clerk?

A. To attend to the sending out of all matters, attending to the debiting and crediting of collections and discounts of the bank, and attending to the general corresponding work.

Q. In attending to that work of the correspondence of the Commercial National Bank of Pennsylvania did you attend to the sending out of items for collection?

A. Yes, sir.

Q. Did you attend to the correspondence between the Commercial National bank and the Fidelity National Bank of Cincinnati?

A. Yes, sir.

59 Q. In transmitting items to the Fidelity National bank, whose duty was it to place the endorsement on the papers?

A. My assistant's. I have an assistant who attends to that. I did it for about five weeks while he was away sick.

Q. Did he put the stamp on?

A. Yes, sir.

Q. Did you affix the endorsement stamp during any portion of the time between the dates named? If so, for what time?

A. Yes, sir; I was running the whole work from the 23rd of April to the 21st of May, 1887; then my assistant attended to it.

Q. Was the endorsement stamped or written?

A. Stamped.

Q. What stamp did you use?

A. The stamp sent to us by the Fidelity National bank.

Q. Is this an impression of the stamp that you used?

Complainant's Exhibit No. 2 handed witness.

A. Yes, sir.

W. H. KNEEDLER.

Duly sworn and subscribed to before me—

W. J. SMYTHE, [L. S.]
Special Examiner.

60 FRANK ANDERMAN, a witness called on behalf of the plaintiff herein and residing at North Wales, Pa., more than one hundred miles from the place where this cause is to be tried, being duly cautioned and sworn to tell the whole truth and being carefully examined, deposes and says as follows:

By Mr. HOADLY:

Q. State your name, residence, and occupation.

A. Frank Anderman; North Wales, Penn.; clerk in the Commercial National Bank of Pennsylvania.

Q. What is your position in the Commercial National bank?

A. Assistant to the corresponding clerk.

Q. How long have you been such assistant?

A. Since the 23rd of May, 1887.

Q. What were your duties as such assistant to the corresponding clerk?

A. To put down the cash items, and several other things.

Q. Whose duty was it to stamp the endorsement on the cash items sent out for collection?

A. Mine.

Q. Was the endorsement stamped or written?

A. Stamped.

Q. In sending out cash items to the Fidelity National Bank of Cincinnati, what s-amp did you use, if any—cash and collection items both?

A. A rubber stamp.

Complainant's Exhibit No. 2 shown witness.

Q. Is that an impression of the stamp that you used?

A. Yes, sir; that is it.

61 Q. From the date you took charge to the 21st day of June, 1887, was any other stamp or endorsement used?

A. No, sir; that was the only one.

Q. Was any other mode of endorsement used?

A. No, sir.

FRANK ANDERMAN.

Duly sworn and subscribed to before me—

W. J. SMYTHE, [L. S.]
Special Examiner.

62 COMMONWEALTH OF PENNSYLVANIA,
Eastern District of Pennsylvania,
City and County of Philadelphia, } *ss:*

I, William J. Smyth, of Philadelphia, Pennsylvania, aforesaid, a special examiner duly appointed and empowered diligently to examine, upon their corporal oaths, before me to be taken, sundry persons as witnesses on the part of either party in a certain cause now pending and undetermined in the circuit court of the United States of America for the western division of the southern district of Ohio,

in the sixth circuit, wherein The Commercial National Bank of Pennsylvania is plaintiff and David Armstrong, receiver of the Fidelity National bank, is defendant, touching the premises, do hereby certify that on the 13th day of April, 1888, personally appeared before me as such special examiner, at the Commercial National bank, No. 314 Chestnut St., Phila., Pa., aforesaid, Edwin P. Graham, William H. Kneedler, a-d Frank Anderman, witnesses in the cause aforesaid on behalf of the plaintiff, who, having been by me first duly cautioned and affirmed, deposed and said as appears by their depositions hereto annexed.

And I further certify that at the examination of the said witnesses there appeared before me George Hoadly, Jr., Esq., and Charles W. Sparhawk, Esq., on behalf of the said plaintiff, and Joseph Wilby, Esq., on behalf of the said defendant.

And I further certify that my clerk, Mr. John Weaver, was before the taking of the said depositions by me duly sworn to faithfully, fairly, and impartially perform his duties as such clerk in the taking of the depositions in the cause aforesaid.

63 And I further certify that the said depositions were then and there taken down stenographically by the said John Weaver and afterwards written out on the typewriter in pursuance with the stipulation entered into by the counsel for both parties as appears on page 2 of the said deposition, and were subscribed by the said witnesses in my presence, and the same have been retained by me for the purpose of sealing up and directing the same to the clerk of the court, as required by law.

And I further certify that the reason why the said depositions were taken was that the said witnesses reside more than one hundred miles from the place where this cause is to be tried.

And I further certify that I am not of counsel or attorney for either party to the said cause, nor am I in any way interested in the result thereof.

And I further certify that the fee for taking the said depositions, $50 (including all charges), is to be paid by the said plaintiff, and that the same is just and reasonable.

In testimony whereof I have hereunto set my hand and seal at Philadelphia, Penn., aforesaid, on this 16th day of April, A. D. 1888.

W. J. SMYTH, [SEAL.]
Special Examiner.

64 EXHIBIT No. 1.

Commercial Nat. B'k, Philada., Pa.

GENTLEMEN: Enclosed herewith we hand you our last statement, showing us to be the second bank in Ohio in deposits in the tenth month of our existence. We would be pleased to serve you and trust you will find it to your advantage to accept one of the following propositions:

No. 1.

We will collect all items at par and allow 2½ % interest on daily balances calculated monthly. We will remit any balance you have above $2,000 in New York draft as you direct, or ship currency at your cost for expressage.

No. 2.

Will collect at par all points west of Pennsylvania and remit the 1st, 11th, and 21st of each month.

No. 3.

We will collect at par Ohio, Indiana, and Kentucky items and remit balance every Monday by draft on New York.

We do not charge for exchange on propositions No. 1, 2, and 3.

No. 4.

Will collect Cincinnati items and remit daily at 40 cents per thousand or 20 cents for $500 or less.

65 National banks not in reserve city can count all they have with us as reserve.

Your early reply will oblige respectfully yours,

E. L. HARPER, *V. P.*

Exhibit No. 1. W. J. Smyth, special examiner.

66 Pay Fidelity Nat'l Bank of Cincinnati, O., or order, for collection for Commercial Nat'l Bank of Philadelphia, Pa.

E. P. GRAHAM, *Cashier.*

Exhibit No. 2. W. J. Smyth, special examiner.

67 Commercial National Bank of Pennsylvania.

PHILADELPHIA, *May* 25, 1887.

Cashier of the Fidelity N. B., Cincinnati, O.

DEAR SIR: We don't wish to complain, but would like to understand why your remittance to us of May 21 only included items sent you up to May 14 and received by you on the 16th. We have to explain these things to our depositors, and wish to act intelligently upon the subject.

Very truly yours, E. P. GRAHAM, *C. P.*

GENTLEMEN: We collect at par and include in our remittances everything collected to date.

E. L. HARPER, *V. P.*

[Written across the face:] Received May 27, '87. Answered.

Exhibit No. 3. W. J. Smyth, special examiner.

68 United States postal card,
One cent.
Nothing but the address to be on this side.

Cincinnati,
May 31, 7 p. m. 10
O.

Received
June 1, 2.30 p. m.
Phila.

Commercial Na'l bank,
Philadelphia, Pa.

(Endorsed.)

The Fidelity National bank.

We credit— CINCINNATI, 5, 31, 1887.

No. or date.	Name.	Proceeds.
5, 3	Myler	494 60
5, 17	Lafayette	16 28

AMMI BALDWIN, *Cashier.* Cash.

(1) Exhibit No. 4, W. J. Smyth, special examiner.

United States postal card,
One cent.
Nothing but the address to be on this side.

Commercial Nat'l bank,
Philadelphia, Pa.

(Endorsed.)

The Fidelity National bank.

We credit— CINCINNATI, *June* 3, 1887.

No. or date.	Name.	Proceeds.
5, 3	Bigly	296 39

AMMI BALDWIN, *Cashier.*

(2) Exhibit No. 4, W. J. Smyth, special examiner.

69 United States postal card, One cent. Cincinnati, June 6, 7 p. m. 10

Nothing but the address to be on this side.

Rec'd June 7. Commercial Na'l bank, Philadelphia, Pa.

(Endorsed.)

The Fidelity National bank.

With credit— CINCINNATI, *June* 6, 1887.

No. or date.	Name.	Proceeds.
5, 4	Lobe	17 23
5, 17	Ibjeels	60 23

AMMI BALDWIN, *Cashier.*

(3) Exhibit No. 4, W. J. Smyth, special examiner.

United States postal card, One cent. Cincinnati, June 6, 7 p. m. O.

Nothing but the address to be on this side.

Rec'd June 7, '87, 6 p. m. Phila. Commercial Nat'l bank, Philadelphia, Pa.

(Endorsed.)

The Fidelity National bank.

With credit— CINCINNATI, *June* 6, 1887.

No. or date.	Name.	Proceeds.
5, 17	Rosendung	30
5, 25	Kelly	496 53
5, 24	J. E.	105 28
5, 27	Crandell	46 50
82529	Langood	9 90

AMMI BALDWIN, *Cashier.*

(4) Ex. No. 4, W. J. Smyth, special examiner.

70 United States postal card, Cincinnati,
One cent. June 10, 6.30 p. m.
Nothing but the address to be on this side. O.

Received ——. Commercial Na'l bank,
Philadelphia, Pa.

(Endorsed.)

The Fidelity National bank.

With credit— CINCINNATI, *June* 10, 1887.

No. or date.	Name.	Proceeds.
5, 17	Tomkins	37 77
5, 27	Bigly	352

AMMI BALDWIN, *Cashier.*

(5) Exhibit No. 4, W. J. Smyth, special examiner.

United States postal card, Cincinnati,
One cent. June 13, 7.30 p. m.
Nothing but the address to be on this side. O.

Commercial Nat'l bank,
Philadelphia, Pa.

(Endorsed.)

The Fidelity National bank.

With credit— CINCINNATI, *June* 13, 1887.

No. or date.	Name.	Proceeds.
4, 20	Hoffman	24
5, 26	Swenbrick	177 21

AMMI BALDWIN, *Cashier.*

(6) Exhibit No. 4, W. J. Smyth, special examiner.

71 United States postal card, Cincinnati,
One cent. June 15, 6.30 p. m., '87.
Nothing but the address to be on this side. O.

Commercial Na'l bank,
Philadelphia, Pa.

(Endorsed.)

The Fidelity National bank.

With credit— CINCINNATI, *June* 15, 1887.

No. or date.	Name.	Proceeds.
5, 27	Ernst	140

AMMI BALDWIN, *Cashier.*

(7) Exhibit No. 4, W. J. Smyth, special examiner.

United States postal card, Cincinnati,
One cent. June 15, 6.30 p. m., '87.
Nothing but the address to be on this side. O.

Commercial Nat'l bank,
Philadelphia, Pa.

(Endorsed.)

The Fidelity National bank.

With credit— CINCINNATI, *June* 15, 188–.

No. or date.	Name.	Proceeds.
6, 2	Lindsey	141 60

AMMI BALDWIN, *Cashier.*

(8) Exhibit No. 4, W. J. Smyth, special examiner.

72 United States postal card, Cincinnati,
One cent. June 17, 5.30 p. m., '87.
Nothing but the address to be on this side. O.

Commercial Na'l bank,
Philadelphia, Pa.

(Endorsed.)

The Fidelity National bank.

With credit— CINCINNATI, *June* 17, 188–.

No. or date.	Name.	Proceeds.
6, 10	Ross	18 75

AMMI BALDWIN, *Cashier.*

(9) Exhibit No. 4, W. J. Smyth, special examiner.

United States postal card,
One cent.

Nothing but the address to be on this side.

Commercial Nat'l bank,
Philadelphia, Pa.

(Endorsed.)

The Fidelity National bank.

With credit— CINCINNATI, *June* 20, 1887.

No. or date.	Name.	Proceeds.
6, 10	Kellan	56 25
6, 10	Merzbark	16 20
6, 2	Sedalia	279 30

AMMI BALDWIN, *Cashier.*

(10) Exhibit No. 4, W. J. Smyth, special examiner.

73 The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *Feb.* 19, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure, as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection— For credit.

[In pencil:]

Waterloo	25
N. O.	209
Galveston	100
Nashv.	206 40
Received Feb. 21, 1887; answered.	540 40

Respondent's Exhibit No. 1, W. J. Smyth, special examiner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order."

All notes, drafts, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

74 The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *Apr.* 5, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—	For credit.
Harvey one	147 87
Scrogg	21 38
Shanvill	41
Johnston, ag't	268 50
Delp & Graff	50

Rec'd Apr. 7, 1887; answered.

Respondent's Exhibit No. 2, W. J. Smyth, special examiner.

Endorse all notes, drafts, or other evidences of debt, "Pat the Commercial National Bank of Pennsylvania or order."

All notes, drafts, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be receiver upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

75 The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *June* 7, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—	For credit.
[In pencil:] R. ac. p'd 6, 13.	
Connersville, Citizens', Connersville	8 08
Memphis, Bank of Commerce	9 90
New Orleans, State Nat.	31 20

Augusta, Ky., Allen, H. & Co.	97 25
Knoxville, Mechanics' Nat.	25 68
Oshkosh, Metro., chge.	21 06
	193 17
Iowa City, Am., Ks. City	481 29
	674 46

Received June 9, '87; answered.

Respondent's Exhibit No. 3, W. J. Smyth, special examiner.

Endorse all notes, drafts, or other evidences of debt, "Pat the Commercial National Bank of Pennsylvania or order."

All notes, drafts, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be receiver upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

76 The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *June* 8, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—	[In pencil:]	For credit.	[In pencil:]
Bateman ..... up.. 33 50	Mechan., Knoxville.	25	Bristol, Tenn.
Meyer & Co. ..... up.. 103 35	1 Milwaukee.	40 63	Milwaukee.
Dietz & Co. ..... up.. 459 96	5 St. Louis.	496 97 up.	San Antonio.
Mer., chge.		496 54 up.	Council Bluffs.
6, 6, ret'd & ch'g'd back		40 44 up.	Helena, Mont.
6, 16, ret'd & ch'g'd back, U. S., ch'ge		765 23	Grafton.
Mechan.		341 61	Bristol, Tenn.
U. S., ch'g'd		500	Schuyler.
U. S., ch'g'd		768 90	Staunton.
		3,478 32	

Received June 10, 1887; answered.

Respondent's Exhibit No. 4, W. J. Smyth, special examiner.

Endorse all notes, drafts, or other evidences of debt, "Pat the Commercial National Bank of Pennsylvania or order."

All notes, drafts, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be receiver upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

77 The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *June* 9, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—	For credit.	[In pencil:]
	200	Detroit, Citizens' Sav.
	72 86	Wabash, Decatur Nat., p'd.
	26 26	Cattlesburg, C. N. Rap, 6, 14.
	59	Omaha, Am., Ks. City.
	10	Omaha, " "
	71 17	Ind's, Fletcher, Ind.
	253	Ind's, Ind. Nat.
	124 14	Bay City, Mich.
	———	Euclid Ave., C.
	816 43	
	816 43	

Received June 11, 1887; answered.

Respondent's Exhibit No. 5, W. J. Smyth, special examiner. 5.

Endorse all notes, drafts, or other evidences of debt, "Pat the Commercial National Bank of Pennsylvania or order."

All notes, drafts, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be receiver upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

78 The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *June* 10, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—		For credit.	[In pencil:]
			Ret'd ch'g'd 6, 16.
Kellar ------up--	56 25	135 23	Ind., Ind., Nat'l.
Merzbach ----up--	16 20	2 56	Lexington, Mo., 5, St. Louis.
Floztz & B.----up--	86 06	56 73	Ind., Fletcher's, Ind.
Olney & B. ---up--	173 08	643 70	Omaha, Am., Ks. City.
King --------up--	29 84	6 30	Kokomo, direct. p'd 6, 16.
Ross---------up--	18 75	10	St. Paul, Metro'n.
		125 55	Owasso, Com., Detroit.
		236 22	East Saginaw, Prest.
		1,216 29	

Received June 13, 1887; answered.

Respondent's Exhibit No. 6, W. J. Smyth, special examiner.

Endorse all notes, drafts, or other evidences of debt, "Pat the Commercial National Bank of Pennsylvania or order."

All notes, drafts, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be receiver upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

79 The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *June* 11, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—	For credit.	[In pencil:]
Coupons	22 75 28	Leavenworth, coll.
	40	Springfield.
	100	Denver, Am., Ks., Met.
	85 74	Iowa City, Met., Ch'go.
	298 26	Mex-a, Texas, 5, St. L.
	574 75	
[In pencil:]	50 75	
	524 00	13

Received June 13, 1887; answered.
Received June 13, 1887; answered.

Respondent's Exhibit No. 7, W. J. Smyth, special examiner.

Endorse all notes, drafts, or other evidences of debt, "Pat the Commercial National Bank of Pennsylvania or order."

All notes, drafts, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be receiver upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

80 The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *June* 13, 1887.

To Fidelity National Bank of Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

Received June 15, 1887; answered.

I enclose for collection— [In pencil:]		For credit.	
E. 10 Nat., Knoxville	133 64	741 12	
1 Nashville, Nashville	77 95		
Am., Ks. City, Topeka	15 55	3,230 91	
Old, G'd Rap., G'd Rapids	15 25	132 81	
Com. Nat., Detroit, Lansing	72 20		
Wis. Mar. & Fire Ins. B., Milwaukee	17 81	3,363 72	
Flecher, Ind's	17 10	*100	*[In pencil.]
Mech., Knoxville, Tennessee	100 05		
" "	24 37	*3,263 72	
E. 10 Nat. "	35		
Merchantile, Memphis, "	31 79		
" "	300		
1 Nashville, "	50 41		
Mech., Knoxville, "	30 17		
4 G'd Rapids, Michigan	38 54		
M. & Mf., Detroit, "	364 30		
Am., Ks. City, Minnesota	55 29		
Metro., Ch'go, Iowa	32 43		
Union Nat,, Kansas	100		
1 Nashville, Nebraska	589 34		
Richmond	236 85		
Nashville	113 80	*300 days	
	37 95	from lot.	

Respondent's Exhibit No. 8, W. J. Smyth, special examiner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

81 The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *June* 14, 1887.

To Fidelity National Bank of Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection— [In pencil:]	For credit.
Old Nat'l, G'd Rapids	84
5 St. Louis, Carthage, Mo.	5 10
1 Nashv., Columbia	37 55
C. E. Potts & Co. on Fidelity, Cin'ti	180 29
City Sav. b'k, Chattanooga	131 17

Am. Nat'l, Ks. City	82	80
St. Nat'l, N. O.	148	97
W. F. & M., Mil., Minneapolis	21	
F. & T. Nat., Covington	120	
5 St. Louis, Fort Worth	255	
	1,065	84
Old Nat., G'd Rap.	990	
	2,055	88

Received June 16, 1887; answered.

Respondent's Exhibit No. 9, W. J. Smyth, special examiner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

82 The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *June* 15, 1887.

To Fidelity National Bank of Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—		For credit.		[In pencil:]
Smallwood, D. & B.	up	214 30	32 50	Axtell, Am., Ks. City.
Johnson, J. & Co.	up	282 72	100	Minn., Wis. F. & M. Ins.
Thompson	up	24 52		
			132 50	

Received June 17, 1887; answered.

Respondent's Exhibit No. 10, W. J. Smyth, special examiner.

Endorse all notes, drafts, or other evidences of debt. "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

83 The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *June* 16, 1887.

To Fidelity National Bank of Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—	For credit.	[In pencil:]
[In pencil:]		64 18
1 Nashville, Lewisburg, Tenn.	64 18	1 50
C'k	1 50	161 12
Euclid Ave., Cleve., Bay City	161 12	15 25
	15 25	up. 1,012 96
	244 34	1,255 01
F. & T., Cov., Carlisle	15 25	
Milwaukee Nat'l, Milwaukee	1,012 96	
	15 75	
	1,514 75	
	15 75	
6, 28.	1,499 35	
	244 34	
	1,255 01	

Respondent's Exhibit No. 11, W. J. Smyth, special examiner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

84 The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *June* 17, 1887.

To Fidelity National Bank of Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—	For credit.
St. Paul	45
Indianapolis	33 98
Sterling	108 80

Minneapolis	86 21
Texarkana	130 81 up.
Huntington	48 45
	525 25

Received June 20, 1887; answered.

Respondent's Exhibit No. 12, W. J. Smyth, special examiner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearin*h*-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

85 The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *June* 18, 1887.

To Fidelity National Bank of Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—		For credit. [In pencil:]
Detroit	44 83	Detroit Nat.
St. Paul	149 50	Met., Ch'go.
Memphis	13 13	Bank of Commerce.
Bay City	7 80	Euclid Ave., Cleve.
N. Orleans	26	Whitney, N. O.
Burlingame	150	Metro., Ch'go } Fees, 1.35; ret'd chg.
Atchinson	1,000	" " } b'k, 6, 20.
N. Vernon	49 31	Direct to Janney & Co. b'k, p'd, 6, 22.
Milwaukee	297 15	Milwaukee Nat.
Kans. City	177 16	1, Ks. City, Mo.
Newport, Ky.	7 30	1, Newport.
	1,922 18	

Rec'd June 20, '87; answered.

Respondent's Exhibit No. 13, W. J. Smyth, special examiner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearin*h*-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

86 United States postal card. (Stamp.)

Nothing but the address to be on this side.

Commercial National bank,
Philadelphia, Pa.

(Endorsed.)

The Fidelity National bank.

CINCINNATI, *Feb.* 28, 1887.

In reply to yours of 25, 26—

We credit subject to payment—
2,384.14.
827.07.

Enter for collection.
2 items.

AMMI BALDWIN, *Cashier.*

Respondent's Exhibit No. 14, W. J. Smyth, special ex.

United States postal card. (Stamp.)

Nothing but the address to be on this side.

Commercial National bank,
Philadelphia, Pa.

(Endorsed.)

The Fidelity National bank.

CINCINNATI, *Mar.* 2, 1887.

In reply to yours of 28—

We credit subject to payment—
761.69.

Enter for collection.

AMMI BALDWON, *Cashier.*

Respondent's Ex. No. 15, W. J. Smith, special examiner.

87 United States postal card. (Stamp.)

Nothing but the address to be on this side.

Commercial National bank,
Philadelphia, Pa.

(Endorsed.)

The Fidelity National bank.

CINCINNATI, *Mar.* 3, 1887.

In reply to yours of 1—

We credit subject to payment—
812.39.

Enter for collection.
No. 16.

AMMI BALDWIN, *Cashier.*

Respondent's Exhibit No. 16, W. J. Smyth, special ex.

United States postal card. (Stamp.)

Nothing but the address to be on this side.

Commercial National bank,
Philadelphia, Pa.

(Endorsed.)

The Fidelity National bank.

CINCINNATI, *Mar.* 4, 1887.

In reply to yours of 2—

We credit subject to payment— Enter for collection.
200.43.

AMMI BALDWON, *Cashier.*

Respondent's Ex. No. 17, W. J. Smith, special examiner.

88 United States postal card. (Stamp.)

Nothing but the address to be on this side.

Commercial National bank,
Philadelphia, Pa.

(Endorsed.)

The Fidelity National bank.

CINCINNATI, *Mar.* 5, 1887.

In reply to yours of 3—

We credit subject to payment— Enter for collection.
333.28.

AMMI BALDWIN, *Cashier.*

Respondent's Exhibit No. 18, W. J. Smyth, special ex.

United States postal card. (Stamp.)

Nothing but the address to be on this side.

Commercial National bank,
Philadelphia, Pa.

(Endorsed.)

The Fidelity National bank.

CINCINNATI, *Mar.* 7, 1887.

In reply to yours of 4, 5—

We credit subject to payment— Enter for collection.
746.51.
1,262.18.

AMMI BALDWON, *Cashier.*

Respondent's Ex. No. 19, W. J. Smith, special examiner.

89 United States postal card. (Stamp.)

Nothing but the address to be on this side.

Commercial National bank,
Philadelphia, Pa.

(Endorsed.)

The Fidelity National bank.

CINCINNATI, *Mar.* 9, 1887.

In reply to yours of 7—

We credit subject to payment— Enter for collection.
980.90.

AMMI BALDWIN, *Cashier.*

Respondent's Exhibit No. 20, W. J. Smyth, special ex.

90 CINCINNATI, *May* —, 188-.

Commercial National Bank, Philadelphia, Pa., in account with the Fidelity National Bank of Cincinnati.

DR.	No.	*Monthly Statement.*		CR.
19	1192 84	81 20	81 20	
20	12 for 4-30	1,135 37		
	" 5-7	401 59		
	— *a*	2 60		
			1,539 56	
31	Balance remitted		11,662 77	
	L 5-16			2,072 09
	" 5-17			703 17
20	" 5-18			440 30
21	5-"	100 79		
	L 5-19	380 56		
				490 35
23	" 5-20	760 09		
	" 5-21	878 28		
				1,638 37
24	5-10	30 70		
	5-2	394 81		
	5-3 D'Utasy	550		
				975 51
25	L 5-23			1,644 94
26	5-11	140		
	5-18	2,700		
	L 5-24	2,120 55		
				4,960 55
27	" 5-25			348 65

Respondent's Exhibit No. 21, W. J. Smyth, special examiner.

91 CINCINNATI, *March* —, 188..

Commercial Nat. Bank, Philadelphia, Pa., in account with the Fidelity National Bank of Cincinnati.

DR.	No.	*Monthly Statement.*		CR.		
11	X r. 5-2 ac	500 67	500 67	11	5-4	16 32
16	" 5-7 "	198 10			L 5-9	2,335 61
	Fees, 1182 87	3 52				2,351 93
			201 62	12	4-23	110 21
					4-30	7 05 not in 4-30
					L 5-10	1,869 66
						1,986 92
				13	4-9	63 90 not in 4-9
					574	25 50
					5-4	25 50
					L 5-11	1,864 83
						1,979 73
				14	" 5-12	281 70
				16	5-3	42 6,900 28
					L 5-13	481 35
					" 5-14	702 54
						1,225 89
		7,264 88		17	4-28	150 150
	Balance remitted	7,976 17				7,976 17

Respondent's Exhibit No. 22, W. J. Smyth, special ex.

92 CINCINNATI, *March* —, 188–.

Commercial Nat. Bank, Philadelphia, Pa., in account with the Fidelity National Bank of Cincinnati.

DR.	No.	*Monthly Statement.*		CR.		
21	X		20 50	21	L 3-18	1,061 75
26	X r. 3-21	66			" "	156 18
	" 3-12	234 52			" 3-19	1,713 58
			300 52			2,931 51
1	Balance remitted	13,491 29		22	3-12	56 25 56 25
				23	3-24	16 27
					L 3-21	2,666 09
						2,682 36
				24	1980	95
					3-16	6 10
					L 3-22	1,502 80
						1,603 90
				25	3-18	249 41
					L 3-23	362 61
						612 02
				26	1977	128 10
					L 3-24	224 08
						352 18
				28	" 3-25	309 59
					" 3-20	1,367 34
						1,676 93
				29	1989	25 50
					1995	25 50
						51
				30	3-21	26
					8 3-28	2,953 67
						2,979 67
				31	" 3-29	866 49
		13,812 31				13,812 31

Respondent's Exhibit No. 23, W. J. Smyth, special examiner.

93 CINCINNATI, *March* —, 188–.

Commercial Nat. Bank of Philadelphia, Pa., in account with the Fidelity National Bank of Cincinnati.

Monthly Statement.

DR.	No.			CR.				
11	R'r 3-5 fa	292 38		11	2-25	174 80		
	11 1018	75			L 3-9	1,000 01		
			293 13		Union D. Co.	370 76		
14	Rec. 3-7 for	303 54	303 54				1,575 57	
16	Tax 11o442	3 35	3 35	12	L 3-10		831 14	
18	Ret. 2-2 8	495 00	495 00	14	3-3	255 67		
19	" 3-14	127 60	127 60		L 3-11	224 23		
21	Balance remitted		8,631 24		" 3-12	1,015 43		
							1,494 73	
				16	" 3-14		3,066 98	
				17	2-25	137 50		
					2-2	122 54		
					L 3-15	852 10		
							1,092 14	
				19	3-2	656 13		
					L 3-17	1,142 17		
							1,798 30	
			9,854 96				9,854 96	

Respondent's Exhibit No. 24, W. J. Smyth, special examiner.

94 CINCINNATI, *Apr.* —, 188–.

Commercial Nat'l Bank, Philadelphia, Pa., in account with the Fidelity Nat'l Bank of Cincinnati.

Monthly Statement.

DR.	No.			CR.				
1	Balance remitted		10,041 62	1	L 3-30		143 68	
				2	" 3-31		217 51	
				4	" 4-1	165 18		
					" 4-2	376 15		
							541 33	
				6	3-17	332		
					L 4-4	3,282 60		
							3,614 60	
				7	3-22 4-5	2,538 75		
					L	1,447 12		
							3,985 87	
				8	3-10	300 68		
					3-22 4-6	60		
					L	175		
							535 68	
				9	3-28 4-7	132 77		
					L	870 18		
							1,002 95	
			10,041 62				10,041 62	

Respondent's Exhibit No. 25, W. J. Smyth, special examiner.

95 CINCINNATI, *Apr.* —, 188–.

Commercial — Bank of Philadelphia, Pa., in account with the Fidelity National Bank of Cincinnati.

DR.	No.	*Monthly Statement.*		CR.
27	4-18		37 69	37 69
	Balance remitted		10,566 31	
21	L 4-19			703 48
22	3-19		303 15	
	4-12		108	
	L 4-20		188 58	
				599 73
23	4-21		136 55	
	3-25		267 38	
	L 4-21		693 34	
				1,097 27
25	4-5		198 44	
	3-25		176	
	L 4-23		109 33	
	" 4-23		637 17	
				1,120 94
27	4-14		25 50	
	"		25 50	
	4-13		30 80	
	L 4 25		2,863 10	
				2,944 90
28	" 4-26			1,454 89
29	4-14		25 50	
	L 4-27		958 33	
				983 83
30	" 4-28			2,698 96

Respondent's Exhibit No. 26, W. J. Smyth, special examiner.

96 CINCINNATI, *April* —, 188–.

Commercial Nat'l Bank, Philadelphia, Pa., in account with the Fidelity National Bank of Cincinnati.

DR.	No.	*Monthly Statement.*		CR.
15	Chg. 4-8		20	20
19	Fa		2 04	2 04
	Balance remitted		19,692 51	
			19,692 55	
11	1978		180	
	3-25		26 65	
	L 4-9		618 42	
				825 07
13	3-25		180 25	
	4-2		385	
	L 4 11		5,098 94	
				5,664 19
14	4-5		21 38	
	L 4-12		1,536 04	
				1,557 42
15	Em		75	
	L 4-13		54 13	
				54 88
16	3-30		220 20	
	L 4-14		632 65	
				852 85
18	" 4-15		2,785 29	
	" 4-16		1,649 44	
				4,434 73
19	3-30		346 39	
	3-25		800	
	4-6		24 03	
				1,170 42
20	4-5		41	
	82121		00	
	4-5		147 87	
	L 4-18		4,966 12	
				5,154 99
				19,692 55

Respondent's Exhibit No. 27, W. J. Smyth, special examiner.

97 CINCINNATI, *May* —, 188–.

Commercial Nat'l Bank of Philadelphia, Pa., in account with the Fidelity National Bank of Cincinnati.

DR.	No.	*Monthly Statement.*	DR.
11		Balance remitted	11,690 15
		Balance	1,000
2	L	4-29	76 99
	"	4-30	2,855 59
			2,932 58
3		3-28	234 45
4		4-5	268 50
		L	1,277 58
			1,546 08
5		"	767 76
6		"	175
7		4-20	100
		"	158 30
		L	1,558 96
			1,817 26
9		4-21	268 05
	L	5-7	887 58
	"	5-6	2,061 39
			3,217 02

Respondent's Exhibit No. 28, W. J. Smyth, special examiner.

98 CINCINNATI, *June* —, 188–.

Commercial Nat'l Bank of Philadelphia, Pa., in account with the Fidelity National Bank of Cincinnati.

DR.	No.	*Monthly Statement.*	CR.
1		Re'r 5-6	90
3		5-25	400
		Balance remitted	17,110 95
			17,600 95
28		5-17	62 48
		5-21	1,000
	L	5-20	716 16
			1,778 64
31	"	5-27	254 56
	"	5-28	1,401 23
			1,655 79
1		5-3	494 60
		5-17	16 28
			510 88
2		3-18	490 54
	L	5-31	2,574 28
			3,064 82
3		5-3	296 39
	L	6-1	1,800 69
			2,097 08
4	"	6-2	1,137 69
6		5-17	60 23
		5-4	17 23
	L	6-3	1,132 85
	"	6-4	1,250 18
			2,466 49
7		5-25	496 53
		5-24	105 28
		5-27	46 50
			648 31
8	L	6-16	4,241 25
			17,600 95

Respondent's Exhibit No. 29, W. J. Smyth, special examiner.

99 And afterwards, to wit, on the 28th day of April, A. D. 1888, the following stipulation was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Stipulation.

United States Circuit Court, Sout-ern District of Ohio, Western Division.

THE COMMERCIAL NATIONAL BANK OF PENNSYLVANIA, Plaintiff,
vs.
DAVID ARMSTRONG, Receiver of the Fidelity National Bank of Cincinnati, Ohio, Defendant.
No. 4087. In Equity. Stipulation.

It is hereby stipulated and agreed between George Hoadly, Jr., counsel for complainant, and Joseph Wilby, counsel for respondent herein, that the evidence to be adduced in this cause on behalf of the respondent may be taken orally, and that the witnesses may be examined before J. W. Cambell, a notary public in and for Hamilton county, as special examiner herein, with all powers of a special examiner as if appointed by order of court herein, and that the depositions of the said witnesses shall be taken by question and answer, and that the examination shall begin on the 7th day of May, 1888, at the office of David Armstrong, receiver, respondent herein,
100 at the corner of Fifth & Walnut Sts., and shall be continued from time to time until completed, on or before May 31st, 1888.

And all notice of the taking of such testimony and the issuing of any commission or order for the taking of the said testimony is hereby waived, and the said testimony taken under this stipulation shall have all the force and effect as if taken in all respects pursuant to equity rule 67.

GEO. HOADLY, JR.
JOSEPH WILBY.

Cin'ti, April 27, '88.

101 And afterwards, to wit, on the 11th day of May, A. D. 1888, the following motion was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Motion.

In the Circuit Court of the United States, Southern District of Ohio.

THE COMMERCIAL NATIONAL BANK OF PENNSYLVANIA, Complainant,
vs.
DAVID ARMSTRONG, Receiver of the Fidelity National Bank, Defendant.
No. 4087. In Equity.

Now comes the complainant and moves the court to issue a commission to take the testimony of C. C. Pierce, at Sioux City, Iowa,

upon interrogatories attached to this motion and upon such cross-interrogatories as shall be filed on behalf of the defendant.

HARMON, COLSTON, GOLDSMITH & HOADLY,
Complainant's Solicitors.

Interrogatories for C. C. Pierce, Witness for the Complainant.

1. State your name, age, place of rewidence, and occupation.
2. State whether or not you were during the year 1887 connected with the Commercial National Bank of Pennsylvania, and, if you answer yes, during what period and in what capacity.

102 3. State whether or not you were the general book-keeper for such bank between February 12th and June 20th, 1887.

4. If you answer yea to the last question, state whether or not you were acquainted with the transactions between said bank and the Fidelity National Bank of Cincinnati.
5. State whether or not you were acquainted with the methods employed by said bank in sending commercial paper to the Fidelity National bank; and, if so, state what they were.
6. State what agreement or understanding there was, if any, as to who should hold the title to commercial paper sent by the Commercial National Bank of Pennsylvania to the Fidelity National bank.
7. State, if you know, in what manner commercial paper sent by the Commercial Nat. bank to the Fidelity Nat. bank was endorsed.
8. State anything you know of advantage to the complainant.

And afterwards, to wit, on the 22nd day of May, A. D. 1888, the following cross-interrogatories were filed in the clerk's office of said court, clothed in the words and figures following, to wit:

United States Circuit Court, S. D. O., W. D.

THE COMMERCIAL NATIONAL BANK
vs.
DAVID ARMSTRONG, Receiver of the Fidelity National Bank. } = 4087.

103 *Cross-Interrogatories to be Propounded to C. C. Pierce.*

1. If your answer to the fourth interrogatory be yea, state how and in what manner you became acquainted with the transactions between the Commercial National Bank of Pennsylvania and the Fidelity National Bank of Cincinnati.
2. If your answer to the 5th interrogatory be yea, state how and in what manner you became acquainted with the methods employed by said Commercial National bank in sending commercial paper to the said Fidelity National bank.
3. If your answer to the 6th interrogatory be that there was any such agreement or understanding as to who should hold the title to commercial paper sent by said Commercial National bank to said Fidelity National bank, please state if you know that of your own personal knowledge.

4. If you say that you know of the terms of such an agreement or understanding of your own personal knowledge, please state whether it was made by letter or by personal interview.

5. If you say it was made by letter, who wrote the letter or letters on behalf of the Commercial National bank and when, and are the letter or letters from the Fidelity bank at the Commercial National bank, Philadel-a?

6. If you say it was made by personal interview, state who acted and spoke on behalf of the Commercial National bank and who acted and spoke on behalf of the Fidelity National bank and when and where it took place and who were present, and state as near as you recollect the language used by each party to the agreement.

7. Were there not statements of account sent by the Fidelity Nat. bank to the Commercial National bank from time to time?

8. Were such statements received with each remittance to the Commercial National bank from the Fidelity National bank?

104 9. How often and on what dates during each month were such statements received?

10. Was it part of your duty in the Commercial National bank to examine such statements of account when received from the Fidelity National bank and to compare them and ascertain whether the items were correctly stated in such accounts or statements?

11. Did not such accounts or statements so received by the Commercial National bank from the Fidelity National bank show the dates respectively when the Fidelity bank gave the Commercial National bank credit for items or pieces of commercial paper transmitted?

12. Did not such accounts or statements show that some items or pieces of commercial paper were credited to the Commercial National bank by the Fidelity National bank as soon as received by the Fidelity Nat. bank and as of the date of their receipt, and that other items were not credited until they had been collected by the Fidelity bank—after the date of their receipt by the Fidelity bank—from the Commercial Nat. bank?

13. Do you not know as an independent fact that it was the uniform course of business between the two banks in question to credit certain items on the receipt thereof and not to credit others on receipt, but afterwards, when collected or paid?

14. If you say there was a difference in the treatment of items transmitted to the Fidelity Nat. bank as to the time when they were credited to the Commercial National bank, is it not a fact that it was the items or pieces of paper payable at sight or on demand, like checks on banks known as "cash items," that were credited as soon as received and treated in this way—as cash—and that it was the items or pieces of paper payable on time, known as "time items," that were not credited until collected?

105 15. Did not the statements or accounts received from the Fidelity Nat. bank, and above referred to, indicate on their face such a distinction in the treatment of cash and time items as to the dates of their credit, and was it not the cash items or sight paper, like checks on banks, that were on those accounts credited as of the date when received?

16. Look at the paper attached hereto, marked Exhibit "A" to cross-interrogatories for C. C. Pierce, which is a copy of one of the statements referred to, and state what the following indicate on the "Cr." side:

1. The letter "L" in the column adjoining the dates.
2. The figures 3-12, 2-24, 3-14, 4-18, 3-21, in the same column.
3. The numbers 1980, 1977, 1989, 1995, in the same column.
4. The figures 3-18, 3-19, 3-21, 3-22, 3-23, 3-24, 3-25, 3-26, 3-28, 3-29, in the column opposite and next to the double red line.
5. The figures 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, in the left-hand column.

17. Please mark with the letter C on the Exhibit "A" all the items which are shown by the date of their credit to be cash items, and with the letter T all the items which by the date of their credit are shown to be time items.

18. Please explain fully how and in what ways the "time items" are indicated on Exhibit "A" and how the "cash items" are indicated.

106 CINCINNATI, *March* —, 188–.

Commercial Nat'l Bank, Philadelphia, Pa., in account with the Fidelity National Bank of Cincinnati.

Monthly Statement.

DR.	No.			CR.				
21	X			20 50	21	L	3-18	1,061 75
26	Ret.	3-21	66			"	"	156 18
	"	3-12	234 52			"	3-19	1,713 58
				300 52				2,931 51
					22	3-12		56 25
					23	2-24		16 27
						L	3-4	2,666 69
								2,682 36
1	Balance remitted			13,491 29	24	1980		95
						3-16		6 10
						L	3-22	1,592 80
								1,693 90
					25	3-18		249 41
						L	3-23	362 61
								612 02
					26	1977		128 10
						L	3-24	224 08
								352 18
					28	"	3-25	309 59
						"	3-26	1,367 34
								1,676 93
					29	1989		25 50
						1995		25 50
								51
					30	3-21		26
						L	3-28	2,953 67
								2,979 67
					31	"	3-29	866 49
				13,812 31				13,812 31

"Exhibit 'A' to X interrogatories for C. C. Pierce."

107 And afterwards, to wit, on the 25th day of May, A. D. 1888, the following entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Journal Y, p. 16.

Upon motion of the complainant and it appearing to the court that the complainant did, on May 11, 1888, and more than ten days

before the making of this order, file its motion for the issue of a commission to take testimony of C. C. Pierce, at Sioux City, Iowa, upon interrogatories exhibited with his said motion, and that it duly notified the defendant of said motion, and that the defendant hath filed his cross-interrogatories to be put to said C. C. Pierce, it is ordered that Adelbert L. Hudson, an attorney-at-law, of Sioux City, Iowa, be, and he is hereby, appointed special examiner of this court to take the testimony of said C. C. Pierce on said interrogatories and cross-interrogatories, and it is further ordered that a commission issue to said Adelbert L. Hudson, under the seal of this court and having attached thereto copies of said interrogatories and cross-interrogatories, certified by the clerk of this court, commanding him to take the testimony of said C. C. Pierce in answer to the same.

And afterwards, to wit, on the 29th day of May, A. D. 1888, the following stipulation was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Stipulation.

THE COMMERCIAL NATIONAL BANK OF PENNSYLVANIA, Plaintiff,
vs.
DAVID ARMSTRONG, Rec. of the Fidelity Nat. Bank of Cincinnati, Def't.

108 It is hereby stipulated and agreed by and between the parties to this cause that for the purpose of showing the contents of the books of the Fidelity National bank or any of them or so much and such entries thereof as are contained in the Exhibits "C," "D," "E," and "F," attached to and made part of the answer of respondent herein, it shall not be necessary to offer the said books of the said Fidelity National bank or any of them or any entry or entries in them or either of them in evidence; but in lieu thereof the respondent may, by the testimony of John Colling, Jr., or other person or persons familiar with said books or entries thereof, verify by comparison or otherwise the dates, names, amounts, and other information contained and recited in said Exhibits C, D, E, & F, and such exhibits thus verified may be used and offered in evidence on the trial of this cause instead of the books or the entries therefrom of the said Fidelity National bank and instead of the testimony of witnesses from said original books or the entries, but without waiving any right of objection to such testimony as to competency or relevancy which the parties might have had to the books or entries themselves if offered in evidence.

HARMON, COLSTON, GOLDSMITH & HOADLY,
Solicitors for Complainant.
KITTREDGE & WILBY, *Solicitors for Respondent.*

May 29, 1888.

And afterwards, to wit, on the 12th day of June, A. D. 1888,
109 the following deposition was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

The deposition of witness taken at my office, in Sioux City, Iowa, in obedience to a dedimus and commission which issued from the office of the clerk of the United States circuit court in and for the southern district of Ohio, western division, on the 20th day of May, 1888, to be read in evidence in a suit pending in said court, wherein The Commercial National Bank of Pennsylvania is complainant and David Armstrong, as receiver of the Fidelity National bank, is defendant, on the part of said complainant.

C. C. PIERCE, of lawful age, being first duly sworn, answereth and says as follows, to wit:

Int. 1. State your name, age, place of residence, and occupation.

Ans. C. C. Pierce; 26; Sioux City, Iowa; cashier Union Stock Yards State bank.

Int. 2. State whether or not you were during the year 1887 connected with the Commercial National Bank of Pennsylvania, and, if you answer yes, during what period and in what capacity.

Ans. I was up to September 30, 1887. I was general book-keeper.

Int. 3rd. State whether or not you were the general book-keeper for such bank between Feb. 12 and June 20, 1887.

Ans. I was.

Int. 4. If you answer yea to the last question, state whether or not you were acquainted with the transactions between said bank
110 and the Fidelity National Bank of Cincinnati.

A. I was.

Int. 5. State whether or not you were acquainted with the methods employed by said bank in sending commercial paper to the Fidelity National bank; and, if so, state what they were.

A. I was. We sent items to the Fidelity bank for collection and remittance at par on the 11th, 21, and 31 of each month. We never kept a deposit account with the Fidelity and never authorized the Fidelity to so treat it or to make the account anything but a collection account.

Int. 6. State what agreement or understanding there was, if any, as to who should hold the title to the commercial paper sent by the Commercial National Bank of Pennsylvania to the Fidelity National bank.

A. It was fully understood and agreed that the Commercial National held the title to all paper sent to the Fidelity. The Fidelity merely held the paper for collection.

Int. 7. State, if you know, in what manner commercial paper sent by the Commercial National bank to the Fidelity National bank was endorsed.

A. I would not be positive as to the exact wording of the endorsement, but it was endorsed with a stamp used for endorsing commercial paper sent to other banks for collection.

Int. 8. State anything further you know of advantage to the complainant.

A. I know of nothing further than I have stated above.

111 Cross-examination:

X Int. 1. If your answer to the 4th interrogatory be yea, state how and in what manner you became acquainted with the transaction between the Commercial National Bank of Pennsylvania and the Fidelity National Bank of Cincinnati.

A. I became acquainted with the transactions between the Commercial and Fidelity personally by assisting the cashier in opening and keeping the account, and, in fact, the account was opened at my suggestion to the cashier.

X Int. 2. And if your answer of the 5th interrogatory be yea, state how and in what manner you became acquainted with the method employed by said Commercial Nat. bank in sending commercial paper to the said Fidelity National bank.

A. By intimate acquaintance with the methods of the Commercial National, derived from ten years' experience in its employ, and by personal knowledge as to these particular transactions, through entries made by myself and the seeing of correspondence, endorsements, etc.

X Int. 3. If your answer to the 6th interrogatory be that there was any such agreement or understanding as to who should hold the title to commercial paper sent by said Commercial National bank to said Fidelity National bank, please state if you know that of your own personal knowledge.

A. I know it from my own personal knowledge in this way: that I personally assisted in opening the account and keeping it, and know that it was opened and kept as an account for collec-
112 tion only.

X Int. 4. If you say that you know of the terms of such an agreement or understanding of your own personal knowledge, please state whether it was made by letter or by personal interview.

A. The arrangement was made by correspondence. The Fidelity made different propositions by circular letter for handling our commercial paper and we accepted one for collection and remittance upon terms before stated.

X Int. 5. If you say it was by letter, who wrote the letter or letters on behalf of the Commercial Nat. bank and when, and are the letter or letters from the Fidelity National bank at the Commercial National bank, Philadelphia?

A. The correspondence on behalf of the Commercial was conducted principally by Mr. Kneedler, the corresponding clerk. I personally wrote one or two letters in arranging terms of opening account. I cannot give dates of correspondence from memory. I do not know whether all the letters of the Fidelity are at the Commercial.

X Int. 6. If you say it was by personal interview, state who acted and spoke on behalf of the Commercial Nat. bank and who acted and spoke on behalf of the Fidelity National bank, and when and where it took place and who were present, and state as near as you can recol-ect the language used by each party to the agreement.

113 A. There was no personal interview, so far as I know.

X Int. 7. Were there not statements of account sent by the Fidelity National bank to the Commercial National bank from time to time?

A. Yes.

X Int 8. Were such statements received with each remittance to the Commercial National bank from the Fidelity National bank?

A. Yes; with each remittance the Fidelity sent statement of what items were covered by the remittance.

X Int. 9. How often and on what dates during each month were such statements received?

A. They came every ten days and at about the 11th, 21st, and 31st.

X Int. 10. Was it part of your duty in the Commercial National bank to examine such statements of account when received from the Fidelity National bank and to compare them and ascertain whether the items were correctly stated in such accounts or statements?

A. It was.

X Int. 11. Did not such accounts or statements so received by the Commercial National bank from the Fidelity National bank show the dates respectively when the Fidelity National bank gave the Commercial National bank credit for items or pieces of commercial paper transmitted?

A. They did.

X Int. 12. Did not such accounts or statements show that some items or pieces of commercial paper were credited to the Commercial National bank by the Fidelity National bank as soon as re-
114 ceived by the Fidelity National bank as of the date of their receipt, and that other items were not credited until they had been collected by the Fidelity bank after the date of their receipt by the Fidelity bank from the Commercial National bank?

A. They credited all cash items received and remitted on dates as before stated for all items collected, and returned all that were protested or unpaid.

X Int. 13. Do you not know as an independent fact that it was a uniform course of business between the two banks in question to credit certain items on the receipt thereof and not to credit others on receipt, but afterwards, when collected or paid?

A. Yes; cash items were credited on receipt, with privilege of returning if not paid, and time items were credited on collection.

X Int. 14. If you say there was a difference in the treatment of items transmitted to the Fidelity National bank as to the time when they were credited to the Commercial National bank, is it not a fact that it was the items or pieces of paper payable at sight or on demand, like checks on banks, known as "cash items," that were credited as soon as received and treated as this was—as cash—and that it was the items or pieces of paper payable on time, known as "time items," that were not credited until collected?

115 A. Yes; as I have already stated.

X Int. 15. Did not the statements or accounts received from the Fidelity National bank, and above referred to, indicate on their face such a distinction in the treatment of cash and time items as to the dates of their credits, and was it not the "cash items" or sight

paper, like checks, on those accounts credited as of the date when received?

A. Yes; as above stated.

X Int. 16. Look at the paper attached hereto, marked Exhibit "A" to X interrogatories for C. C. Pierce, which is a copy of one of the statements referred to, and state what the following indicates on the "Cr." side:

1. The letter "L" in the column adjoining the dates.
2. The figures 3-12, 2-24, 3-16, 3-18, 3-18, 3-21 in the same column.
3. The numbers 1980, 1977, 1989, 1995 in the same column.
4. The figures 3-18, 3-19, 3-21, 3-22, 3-23, 3-24, 3-25, 3-26, 3-28, 3-29 in the column opposite and next to the double red lines.
5. The figures 21, 22, 23, 24, 25, 26, 28, 29, 30, 31 in the left-hand column.

A. The letter "L" indicate- letter from our corresponding clerk; the figures 3-12, etc., signify date of such letter, the first figure denoting the month and the second the day of the month; the numbers 1980, etc., indicate our number, as I understand it; the figures 3-18, etc., indicate, as before stated, the date of correspondent's letter; the figures 21, 22, etc., indicate date of credit.

X Int. 17. Please mark with the letter C on the Exhibit
116 "A" all the items which are shown by the date of their credit to be cash items, and with the letter T all the items which by the date of their credit are shown to be time items.

A. I have marked with the letter C, in violet ink, such items as I judge to be cash items, but cannot state positively as to this without looking at the ledger of the Commercial bank.

X Int. 18. Please explain fully how and in what ways the "time items" are indicated on Exhibit "A" and how the "cash items" are indicated.

A. There is nothing, so far as I see, on Exhibit "A" to distinguish "cash" and "time" items, except on comparison with ledger.

C. C. PIERCE.

Sworn to before me by affirmation and subscribed in my presence by the said C. C. Pierce this 9th day of June, 1888.

ADELBERT L. HUDSON, [SEAL.]
Notary Public in and for Woodbury Co., Iowa.

STATE OF IOWA, }
Woodbury County, } *ss:*

I, A. L. Hudson, a notary public in and for said county and State and special examiner herein, duly appointed by the court, hereby certify that under and by virtue of the commission hereto attached the foregoing deposition of C. C. Pierce was taken before me, and, after the same had been reduced to writing by me and read
117 over to the said witness, was subscribed and sworn to by the said deponent, at my office, in Sioux City, in said county, on the 9th day of June, 1888, by affirmation; and I further certify that no one was present at such examination except myself and said deponent, and that neither of the parties hereto or their agents or

attorneys were present at such examination, and that I am not related to either of said parties or their attorneys nearer than the 5th degree.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Sioux City, Iowa, this 9th day of June, 1888.

ADELBERT L. HUDSON, [SEAL.]
Notary Public in and for Woodbury County, Iowa, and Special Examiner Herein, Thereto Duly Appointed by the Court.

Fees:

Notary	3 00
Witness	1 35
	$4 35

Paid by complainant's attorneys.

118 *Interrogatories for C. C. Pierce, Witness for the Complainant.*

1. State your name, age, place of residence, and occupation.
2. State whether or not you were during the year 1887 connected with the Commercial National Bank of Pennsylvania, and, if you answer yes, during what period and in what capacity.
3. State whether or not you were the general book-keeper for such bank between February 12 and June 20, 1887.
4. If you answer yea to the last question, state whether or not you were acquainted with the transactions between said bank and the Fidelity National Bank of Cincinnati.
5. State whether or not you were acquainted with the methods employed by said bank in sending commercial paper to the Fidelity National bank; and, if so, state what they were.
6. State what agreement or understanding there was, if any, as to who should hold the title to commercial paper sent by the Commercial National Bank of Pennsylvania to the Fidelity Nat'l bank.
7. State, if you know, in what manner commercial paper sent by the Commercial National bank to the Fidelity National bank was endorsed.
8. State anything further you know of advantage to the complainant.

SOUTHERN DISTRICT OF OHIO, *ss:*

A true and correct copy of the original on file in this office.
Attest: B. R. COWEN, *Clerk*,
By R. C. GEORGI, *Deputy*. [SEAL.]

119 United States Circuit Court, S. D. O., W. D.

THE COMMERCIAL NATI-NAL BANK
vs.
DAVID ARMSTRONG, Receiver Fidelity National Bank. } No. 4087.

Cross-Interrogatories to be Propounded to C. C. Pierce.

1. If your answer to the 4th interrogatory be yes, state how and in what manner you became acquainted with the transactions

between the Commercial National Bank of Pennsylvania and the Fidelity National Bank of Cincinnati.

2. If your answer of the 5th interrogatory be yea, state how and in what manner you became acquainted with the method employed by said Commercial National bank in sending commercial paper to the said Fidelity National bank.

3. If your answer to the 6th interrogatory be that there was any such agreement or understanding as to who should hold the title to commercial paper sent by said Commercial National bank to said Fidelity Nat. bank, please state if you know that of your own personal knowledge.

4. If you say that you know of the terms of such an agreement or understanding of your own personal knowledge, please state whether it was made by letter or by personal interview.

5. If you say it was made by letter, who wrote the letter or letters on behalf of the Commercial National bank and when, and are the letter or letters from the Fidelity National bank at the Commercial National bank, Phila.?

6. If you say it was made by personal interview, state who acted and spoke on behalf of the Commercial National bank and
120 who acted and spoke on behalf of the Fidelity National bank and when and where it took place and who were present, and state as near as you can recollect the language used by each party to the agreement.

7. Were there not statements of account sent by the Fidelity National bank to the Commercial National bank from time to time?

8. Were such statements received with each remittance to the Commercial National bank from the Fidelity National bank?

9. How often and on what dates during each month were such statements received?

10. Was it part of your duty in the Commercial National bank to examine such statements of account when received from the Fidelity National bank and to compare them and ascertain whether the items were correctly stated in such accounts or statements?

11. Did not such accounts or statements so received by the Commercial National bank from the Fidelity National bank show the dates respectively when the Fidelity National bank gave the Commercial National bank credit for items or pieces of commercial paper transmitted?

12. Did not such accounts or statements show that some items or pieces of commercial paper were credited to the Commercial National bank by the Fidelity National bank as soon as received by the Fidelity National bank and as of the date of their receipt, and that other items were not credited until they had been collected by the Fidelity bank—after the date of their receipt by the Fidelity bank—from the Commercial National bank?

13. Do you not know as an independent fact that it was
121 the uniform *uniform* course of business between the two banks in question to credit certain items on the receipt thereof and not to credit others on receipt, but afterwards, when collected or paid?

14. If you say there was a difference in the treatment of items transmitted to the Fidelity National bank as to the time when they were credited to the Commercial National bank, is it not a fact that it was the items or pieces of paper payable at sight or on demand, like checks on banks known as "cash items," that were credited as soon as received and treated in this way—as cash—and that it was the items or pieces of paper payable on time, known as "time items," that were not credited until collected?

15. Did not the statements or accounts received from the Fidelity National bank, and above referred to, indicate on their face such a distinction in the treatment of such cash and time items as to the dates of their credit, and was it not the "cash items" or sight paper, like checks, on those accounts credited as of the date when received?

16. Look at the paper attached hereto, marked Exhibit "A" to X interrogatories for C. C. Pierce, which is a copy of one of the statements referred to, and state what the following indicates on the "Cr." side:

1. The letter "L" in the column adjoining the dates.
2. The figures 3-12, 2-24, 3-16, 3-18, 3-21, in the same column.
3. The numbers 1980, 1977, 1989, 1995, in the same column.
4. The figures 3-18, 3-19, 3-21, 3-22, 3-23, 3-24, 3-25, 3-26, 3-28, 3-29, in the column opposite and next to the double red line.
5. The figures 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, in the left-hand column.

121½ 17. Please mark with the letter C on the Exhibit "A" all the items which are shown by the date of their credit to be cash items, and with the letter T all the items which by the date of their credit are shown to be time items.

18. Please explain fully how and in what ways the "time items" are indicated on Exhibit "A" and how the "cash items" are indicated.

122 CINCINNATI, *Mch* —, 188–.

Commercial Nat'l Bank, Phila., Pa., in account with the Fidelity Nat'l Bank, Cincinnati.

DR.	No.	*Month- Statement.*		CR.	
21	X		20 50		
26	Ret. 3-21	66			
	" 3-12	234 52			
		300 52			
		*300 52	*320 02		
1	Balance remitted		13,491 29		
			13,812 31		
21	L C 3-18			1,061 75	
	" C "			156 18	
	" C 3-19			1,713 58	
					2,931 51
22	3-12			56 25	56 25
23	2-24			16 27	
	L C 3-4			2,666 09	
					2,682 36
24	1980			95	
	3-16			6 10	
				*101 10	
	L C 3-22			1,502 80	
					1,603 90
					*7,274 02
25	3-18			249 41	
	L C 3-23			362 61	
					612 02
26	1977			128 10	
					*8,238 22
	L *7,917.20 3-24			224 08	
					352 18
28	" C 3-25			369 59	
	" C 3-26			1,307 34	
					1,676 93
					*9,960 15
29	1989			25 50	
	1995			25 50	
					51
30	3-21			26	
	L 3-28			2,053 67	
					2,079 67
31	" C *13,491.20 3-20				806 49
					*13,812 31
					13,812 31

"Exhibit 'A' to X interrogatories for C. C. Pierce." * In pencil in copy.

123 SOUTHERN DISTRICT OF OHIO, *ss:*

A true and correct copy of the original on file in this office.
Attest: B. R. COWEN, *Clerk*, [SEAL.]
By R. C. GEORGI, *Deputy.*

And afterwards, to wit, on the 12th day of June, A. D. 1888, the following deposition- of John T. Colling, Jr., and Wm. P. Bradley *was* filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Circuit Court of the United States in and for the Southern District of Ohio, Western Division.

THE COMMERCIAL NATIONAL BANK OF PENNSYLVANIA, Plaintiff,
vs.
DAVID ARMSTRONG, Receiver of the Fidelity National Bank, Defendant.

The depositions of William P. Bradley and John T. Colling, Jr., certain witnesses in a cause now pending and undetermined in the circuit court of the United States of America for the western division of the southern district of Ohio, in the sixth circuit,

wherein The Commercial National Bank of Pennsylvania is plaintiff and David Armstrong, receiver of the Fidelity National
124 bank, is defendant, taken before me, J. Hartwell Cabell, special examiner, duly appointed and empowered for said purpose and in pursuance of stipulations signed by counsel on both sides and filed on the 28th day of May, 1888, and adjourned from day to day until the same were completed, at the office of David Armstrong, receiver of the Fidelity National bank, cor. of 5th and Walnut Sts., Cincinnati, Ohio, on the part of the defendant and to be read in evidenre at the trial of the above-entitled cause.

Present: George Hoadly, Jr., Esq., in behalf of complainant; Joseph W. Wilby, Esq., in behalf of defendant.

It was stipulated by and between counsel for The Commercial National Bank of Pennsylvania, complainant, and counsel for David Armstrong, receiver, respondent herein, that the depositions taken under the stipulation heretofore entered into by counsel for both parties and filed in this cause on April 28, 1888, shall be taken in short-hand and may be written out on the typewriter and signed by the witnesses.

Attest: J. HARTWELL CABELL, [SEAL.]
Special Examiner.

And the depositions were proceeded with as follows:

125 WILLIAM P. BRADLEY, a witness of lawful age produced on behalf of the defendant, being first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, proceeded to give his testimony as follows:

Direct examination by Mr. WILBY:

Q. Please state your name, age, residence, and occupation.

A. My name is William P. Bradley; I am 62 years old; live in Newport, Ky., and am a book-keeper.

Q. State whether or not you were ever in the employ of the late Fidelity National Bank of Cincinnati, Ohio.

A. Yes, sir.

Q. When and in what capacity and during what period of time?

A. I had charge of the making out of the statements with the national banks that were correspondents of the Fidelity Nat. bank.

Q. During what period?

A. From the 15th, I think, of April, 1886, until the failure of the bank, on the 21st of June, 1887.

Q. Explain a little more fully what you mean by making out statements for national banks and what your duty was in that behalf and what you did.

A. My duty was simply to take from the daily books all the mail credits that were received by mail and also the collection
126 credits and enter them on sheets prepared for that purpose.

Q. How does a mail credit differ from a collection credit?

A. The mail credits were items that were paid on demand and the collection credits were bills or drafts that were due some time after they were received. Sometimes the time would be more and sometimes less. They were time bills.

Q. What difference, if any, was there between what you have described as mail credits and what you have described as collection credits with regard to the date or time at which they were credited on the books of the Fidelity National bank?

A. The mail credits were entered to the credit of a bank the day they were received; the collection credits were entered on the day that they were paid.

Q. Do you remember the Commercial National Bank of Pennsylvania doing business in Philadelphia as one of the correspondents of the Fidelity National bank during the time that you were connected with the Fidelity bank?

A. Yes, sir.

Q. When, if you recollect, did they begin their account with the Fidelity bank?

A. I think they began it in February of 1887.

Q. How often, if at all, according to your recolle-tion, were these accounts or statements which you have testified that you made out sent by the Fidelity National bank to the Commercial National Bank of Pennsylvania?

Counsel for complainant objects to question on the ground that the witness has not said that he did send the statements to the Com. bank.

127 A. The statements were sent three times a month.

Q. By whom were these statements made out, did you say?

A. Made out by myself.

Q. During all that time?

A. Yes, sir.

Q. Please examine the papers now exhibited to you, which are attached to the deposition of Edwin P. Graham in this cause and marked Exhibits = 21, 22, 23, 24, 25, 26, 27, 28, and 29, and state if you know in whose handwriting the letters and figures upon these exhibits are, except the designation of the exhibit.

A. They are all in my handwriting and made out by me.

Q. When were they made out by you?

A. They were made out on the—whenever there was an item credited as they purport to be; here, for instance—do you want each one specified?

Q. Answer it just as you can.

A. I would like to put my answer in language so that it will not be misunderstood. Now, these statements were made out daily; sometimes there was an item to go into them, sometimes there would not be, and sometimes there would be two or three. For instance, in this statement here, on the 19th there was only one item, on the 20th there was four, on the 21st, two; here on the 24th there was two, on the 26th there was three, and on the 27th only one.

Q. Then state whether or not, Mr. Bradley, the entries in the state-

ments before you were made at the end of the period of ten days—that is to say, upon the 1st, 11th, and 21st—for the entire period of ten days preceding those dates in each month or were the
128 items entered from day to day as they came into the bank?

A. They were entered from day to day as the credits came into the bank.

Q. By "entered" do you mean entered upon the statements before you?

A. On the statements before me; yes, sir.

Q. I notice on the statements before you on the credit side of these statements a line or column of figures adjoining the single perpendicular ruling in the statements on the right of that single ruling and being, for example, on Exhibit No. 21, the figures 20, 21, 23, 24, 25, 26, and 27. State what that column of figures indicates in this statement.

A. The dates when these items were credited.

Q. Look now at the next column of figures and letters directly to the right of the column to which I have just called your attention and about which you have answered and separated from it by a single perpendicular red line and state what in that column the letter "L" indicates.

A. The letter "L" indicates letters received from the Commercial Bank of Philadelphia.

Q. Opposite and on the same parallel line with these letters "L" on the statements you are now examining I notice a column next adjoining on the left a double red line, perpendicular red line, the figures 5-16, 5-17, 5-18, etc. What do these figures indicate?

A. They represent the dates of the letters received from the Commercial Bank of Philadelphia.

Q. Taken together, the letter "L" and the figures opposite
129 on the same parallel line on the statement, 5-16, etc., as you have just described, what, if anything, do they, taken together, indicate as to the character of the item described by it as to its being a cash or a mail item or a collection item?

A. It represents the—those items that are cash remittances.

Q. And upon what date compared with the date of the receipt of such items by the Fidelity National bank were they entered to the credit of the bank from whom they were received, say the Commercial National Bank of Pennsylvania, for example?

A. Well, the item that was entered upon the 20th was dated Philadelphia, the 18th.

Q. My question is, Mr. Bradley, when, with reference to the date of the receipt by the Fidelity National bank of the item, the letter "L" and the figures opposite were credited on the books of the Fidelity National bank—that is, were they or not credited upon the date of their receipt?

Question objected to by counsel for complainant as incompetent, immaterial, and irrelevant.

A. Yes, sir; on the date of their receipt.

Q. Does the manner of the entry of such items on the statements before you indicate or not that such items were credited?

A. Yes, sir.

Counsel for complainants enters same objection to both question and answer.

Q. Look now at the column of figures in the same column with the letters "L" to which your attention has been previously called, being the column next adjoining on the right of the perpen-
130 dicular red line separating them from the column of dates which you have described, and state what those figures in that column indicate.

A. Those figures in that column signify the dates upon which these remittances were sent from Philadelphia. They were time collections. They were sent in their letter, for instance, of the third, and they were paid on the 21st. They were time collections.

Q. How is it indicated on the statements before you that they were paid upon the 21st, or upon whatever dates they were credited?

A. Well, it is indicated because I know that was the way in which these items were credited up. My memory carries that fact. They were made these credits on these dates. The 5-3, 5-10, 5-2, 5-3, 5-11, 5-18, etc., were the dates under which these remittances were made from Philadelphia, as shown in their letters of the respective dates.

Counsel for complainant enters same objection to both question and answer.

Q. And at what dates does the statement at which you are looking indicate that these time items are credited?

A. The 5-3 was credited on the 21st of May; the 5-10, the 5-2, and the 5-3 were credited on the 24th of May, and the 5-11 and the 5-18 were credited on the 26th of May.

Counsel for complainant enters same objection to both question and answer.

Q. What is the number of the exhibit or statement from which you have testified as to the items?

A. Exhibit = 21.

131 Q. State whether or not the same system and course of description and treatment, distinguishing between the cash items and the time items, was followed by you and will be found in all the statements to which your attention has been called, and as shown you in the exhibits which have been enumerated.

A. Yes, sir.

Q. Can you state whether or not the exhibits from 21st to the 29th, inclusive, now shown you, constitute all of such statements which you—which were made out by you showing the account between the Commercial National Bank of Pennsylvania and the Fidelity National bank?

A. No, sir.

Q. Do you mean that you cannot tell, or that there were more?

A. There were more; there is none here previous to May.

Q. Who, if you know, in the Fidelity National bank, during the period covered by the account with the Commerical National Bank of Pennsylvania, sent off the statements like these to which your attention has been called?

A. Well, the men that put them in the envelopes and directed them were named Frank Loree and James Bryant; they were the mailing clerks. When these remittances were made accompanying these statements I, at the same time, made out a charge ticket charging the Commercial National bank with the amount of the remittances and crediting the New York bank upon which the drafts were drawn, and passed them over to Miss Josie Holmes, who made out the drafts, after which they were signed by one of the officers of the bank, either Mr. Baldwin, as cashier, or Mr. Harper, as vice-president.

132 Cross-examination by Mr. HOADLY:

X Q. Mr. Bradley, I will ask you if you know at what times remittances were made to the Commercial National Bank of Pennsylvania.

A. The first remittance that I have here is dated the 31st of May, 1887. Do you want the amounts?

X Q. No; I don't care for the amounts.

A. I could not tell with reference to all of them without looking at the ledger there, showing the dates of these remittances.

X Q. I will ask you whether it is not a fact that remittances were actually made to the Commercial National Bank of Pennsylvania on the 1st, the 11th, and the 21st of each month and not at any other time.

A. Yes, sir—that is, the dates they were purported to be made on. I, of course, could not answer of my own knowledge as to whether they were made or not. I did not attend to that part of it.

X Q. I will ask you if it is not the fact that they were made at those dates and no others.

A. It is my impression, only on those dates. My instructions were to make these accounts out on the 1st, the 11th, and the 21st of each month—of each one of the months. That was my instructions and which I followed, as far as that was concerned.

X Q. I will ask you, Mr. Bradley, in case of a failure to collect any of these sight items, whether or not the item so uncollected was not charged to the Commercial National Bank of Pennsyl-
133 vania as against the credit which it formerly received for that amount.

A. Yes, sir; they were always charged back if they were not paid—that is, in the case of sight drafts. Time drafts were only credited when they were paid. Sight drafts were credited when they were received, and if not paid they were charged back.

WILLIAM P. BRADLEY.

Duly subscribed and sworn before me—

J. HARTWELL CABELL, [SEAL.]
Special Examiner.

By consent of counsel the taking of these depositions is hereby adjourned to 29th day of May, 1888, at 2 o'clock p. m., same place.

J. HARTWELL CABELL,
Special Examiner.

CINCINNATI, OHIO, *May 29th*, 1888—2 p. m.

Parties met pursuant to adjournment, George Hoadly, Jr., being again present for complainant and Joseph Wilby for respondent, and the taking of the depositions was proceeded with as follows:

JOHN T. COLLING, Jr., a witness of lawful age produced on behalf of the respondent, being first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, proceeded to give his testimony as follows:

Direct examination by Mr. WILBY:

Q. Please state your name, age, residence, and occupation.

A. My name is John T. Colling, Jr.; I am 30 years old; live at
= 596 E. 3rd street, Cincinnati, Ohio, and am a book-keeper for D. Armstrong, receiver.

134 2 Q. What connection, if any, and if any when and for what period of time, had you with the late Fidelity National Bank of Cincinnati, Ohio?

A. For about nine months I was employed as book-keeper for the Fidelity National Bank of Cincinnati; it was for about nine months before it failed.

3 Q. What were your duties during that time?

A. I was employed as individual book-keeper for five months and for the other four months I was employed at the collection desk on the general books.

4 Q. Please examine Exhibits "C," "D," "E," and "F" attached to respondent's answer in this cause, now shown you, and state by whom they were made and in whose handwriting the letters and figures upon them are.

A. They are in my handwriting.

5 Q. When were they made?

A. Do you want the exact time?

6 Q. No; just about.

A. I cannot state exactly. They were made since the failure of the Fidelity National bank—about three months ago, I guess.

7 Q. State from what they were made up by you.

A. They were made up from the books of the Fidelity National bank and from the accounts current of the correspondents who collected the items mentioned in the statements.

8 Q. State whether or not a comparison was made by you in making those statements with the dates, amount, names, etc., on the books of the Fidelity bank.

A. They were made up partly from them and partly from the letters of the Commercial National Bank of Philadelphia.

135 The books of the Fidelity bank show nothing but the total amount of the letter, and the items themselves had to be

taken from the letters of the Commercial National bank in which they were itemized.

9 Q. State whether or not the dates, names, and amounts on the exhibits shown you are a correct statement of the same as they appear on the books of the Fidelity National bank.

A. The amounts and totals are the same as they appear on the books of the Fidelity National bank and the names and amounts of each item are taken from the letters, and they are correctly taken off.

10 Q. How as to the dates?

A. The dates were taken from the books of the Fidelity Nat. bank.

11 Q. Correctly taken or otherwise?

A. Why, correctly taken, I suppose.

12 Q. Look at Exhibit "C" and state what the column (being a column of dates) on the extreme left represents.

A. They represent the date of the letter of the Commercial National Bank of Pennsylvania.

13 Q. What do the names in the column next to the right of the column of dates, beginning "Connersville, Ind.," represent?

A. They represent the name of the *twon* on which the check or sight item was on.

14 Q. What does the next column to the right (being a column of dates) represent?

A. The date that the Fidelity National bank put them on its books. They were credited on the books of the Fidelity National bank
136 to the Commercial National Bank of Pennsylvania and charged to the correspondent advising them.

15 Q. What does the next column, being to the right of the column of dates just referred to and headed "Citizens' bank, Connersville, Ind.," represent?

A. That represents the name of the bank to whom the item was sent for collection.

16 Q. What does the next column to the right, being a column of figures, represent?

A. The amounts of the items collected.

17 Q. What does the next column to the right, being the last column on the extreme right, represent?

A. That represents the state of the account of the correspondent who collected the item at the time when it was paid to them, and also represents the condition of the account at the close of the business of the Fidelity National bank on June 20th.

18 Q. Look now at Exhibit "D" attached to the same answer of respondent in this cause, and state what the column of dates on the extreme left represents.

A. That represents the dates of the letters of the Commercial Nat. Bank of Pennsylvania.

19 Q. The next column to the right, being names of *twons*, what does that represent?

A. I see that in this column they have not put the names of the towns, but the names of the parties on whom the item is; we will take the names of towns out.

20 Q. What does the next column to the right, being a column of dates, represent?

137 A. Those are the dates on which they were credited on the books of the Fidelity National bank and advised to the Commercial National Bank of Pennsylvania.

21 Q. What does the next column to the right, being a column of names, represent?

A. They represent the names of banks to whom they were sent.

22 Q. What does the next column to the right, being a column of figures, represent?

A. The amounts of the items.

23 Q. What does the next column to the right, being the column on the extreme right, represent?

A. That represents the state of the account of the correspondent to whom the item was sent on the date it was charged to them on the books of the Fidelity National bank, and also the state of their account on June 20, being the date of the failure of the Fidelity National bank.

24 —. Look at Exhibit "E," attached to the same answer of respondent shown you, and state what the column of dates on the extreme left represents.

A. That represents the date of the letter in which the item was sent to the Fidelity National bank by the Commercial National Bank of Pennsylvania.

25 Q. What does the next column to the right, being a column of names of persons or towns, represent?

A. Represents the name of the party whom the item was on, and also the name of the town where it was on.

138 26 Q. What does the next column to the right, being a column of dates, represent?

A. That represents the date of credit by the correspondent to *to* whom the Fidelity National bank sent the item.

27 Q. What does the next column to the right, being a list of the names of towns, represent?

A. That represents the name of the bank to whom it was sent for collection.

28 Q. What does the next column to the right, being a column of figures, represent?

A. The amounts of each item.

29 Q. What does the next column, being the column on the extreme right, represent?

A. That represents the state of the account of the correspondent on the date of the collection, and also the state of their account on the date of the failure of the Fidelity National bank.

30 Q. Look now at Exhibit "F," attached to the same answer of respondent, and state what the column on the extreme left, being a column of dates, represents.

A. That represents the date of the letter from the Commercial National Bank of Pennsylvania.

31 Q. What does the next column to the right, being a column of the names of towns, represent?

A. That represents the name of the town the item was on.

32 Q. What does the next column to the right, being a column of dates, represent?

A. That represents the date the item was returned and charged on the account.

139 33 Q. What does the next column to the right, being a column of figures, represent?

A. The amounts of the items charged back.

34 Q. What does the memorandum at the bottom of Exhibit "F," beginning with the words, "collection at Fidelity, charged," etc., represent?

A. It represents a charge that was made on May 19, 1887, by the Fidelity National bank against the account of the Commercial National Bank of Pennsylvania for collections. This charge was an error, and hence should be credited back.

35 Q. Look at Exhibit "C" again and state what class or character of items are contained in that list or schedule or exhibit.

A. They are all cash items.

36 Q. What do you mean by "cash items"?

A. Items credited upon receipt—checks and sight drafts.

37 Q. On receipt from whom?

A. From the Commercial National Bank of Pennsylvania by the Fidelity National bank. Such items were always entered on the letter of the Commercial National Bank of Pennsylvania and a footing made of such items designating whether they were cash or for collection.

38 Q. Look at the papers now shown you, being Exhibits Nos. 1 to 13, inclusive, attached to the deposition of E. P. Graham in this cause, and state whether or not those are letters of the Commercial National Bank of Pennsylvania containing such items as you have referred to; and, if so, do they and how show the footing you have indicated in your last answer.

A. These are the letters of the Commercial National Bank of Pennsylvania. Most of the items contained in these letters are
140 cash items, designated by a line drawn under the items and then being footed by the Commercial National Bank of Pennsylvania.

39 Q. In what colored ink do you find the footings you refer to as being the footings of cash items on those letters?

A. Purple ink; same as the items themselves.

40 Q. What other class of items were received by you, if you know, from the Commercial National Bank of Pennsylvania during the period your bank had an account with them besides the cash items such as you have described?

A. There were time items, time collections, items other than checks or sight drafts, such as, for instance, notes.

41 Q. Would a time draft be a sight or a time item?

A. Well, time drafts have a specified number of days to run, such as three days sight, or they may have a specified date of payment, such as two or three months or so many days sight.

42 Q. My question is, would a time draft be a cash or a time item?

A. A time draft would be entered up for collection—it would be a time item; it would not be a cash item.

43 Q. Were or not time items footed in the way you have just described sight items were footed on the letters from the Commercial National Bank of Pennsylvania enclosing them to you?

A. They were usually entered in a separate column on their letters, under the head of "collection," and they were never footed, simply the name of the town and the amount.

44 Q. Was or not that the uniform course of business and treatment between the banks?

A. The uniform course of business between the two banks.

141 45 Q. Look at Exhibit "D," attached to the answer of respondent, and state what class or character of items are contained in that exhibit, or list, or schedule.

A. They were time items—collections that were sent by the Commercial National Bank of Pennsylvania to the Fidelity National bank under the head of "collection."

46 Q. State whether or not the items in that Schedule "D" were paid and credited to the Commercial National Bank of Pennsylvania on the books of the Fidelity National bank before or after the evening of the 20th of June, 1887.

A. They were all credited up on June 18th, or previous.

47 Q. Look at Exhibit "E," attached to the answer of respondent, and state what class or character of items are contained in that exhibit, list, or schedule.

A. They were time items treated by the Fidelity National bank as collections and paid before the failure of the Fidelity National bank, but not credited upon the books of the Fidelity National bank until after June 20th.

48 Q. State whether or not you know of any instructions given to the correspondents of the Fidelity National bank prior to the beginning of the account with the Commercial National Bank of Pennsylvania with reference to the footing or otherwise of cash items as distinguished from time items in the letters in which such items were transmitted by any correspondent of the Fidelity National bank, and in particular any such instructions to the Commercial National Bank of Pennsylvania.

Counsel for complainant enters his objections to so much
142 of the question as relates to any instructions except those given to the Commercial National bank on the ground of incompetency and irrelevancy, and to so much of the question as relates to instructions given to the Commercial National bank on the ground that it has not been shown that the same were brought to the notice of or were received by the Commercial National bank.

A. There was a printed circular sent by the Fidelity National bank to all its correspondents giving instructions as to how to enter items on letters, distinguishing cash items from collections. These circulars were sent to all the correspondents of the Fidelity National bank.

49 Q. Were they or not sent from time to time to correspondents of the Fidelity bank as fast as accounts were from time to time opened with them?

Counsel for complainant enters same objection as last above to this question.

A. Yes, sir; they were usually sent to a correspondent at the time the account was opened.

50 Q. Have you one of those circulars?

Counsel for complainant enters same objection as to previous questions.

A. I have.

51 Q. Will you produce it and mark it Exhibit "A" and attach it to and make it a part of your deposition?

Counsel for complainant enters same objections.

143 A. I will.

And thereupon witness produced circular, marked Exhibit "A" and made by him a part of this deposition and attached hereto. Counsel for complainant thereupon enters his objection thereto being the same as objection entered to question # 48 of this deposition.

52 Q. Do the letters to which your attention has been called, marked Exhibit- Nos. 1 to 13, inclusive, attached to the deposition of E. P. Graham in this cause, constitute all the correspondence or letters enclosing remittances which were received from the Commercial National Bank of Pennsylvania by the Fidelity National bank from the date of the opening of the account with the Commercial National Bank of Pennsylvania down to the date of the failure of the Fidelity National bank?

A. They do not. There are a great many others, perhaps seventy-five or a hundred; there may be a hundred of them.

53 Q. Will you produce the rest of such letters which contained remittances from the Commercial National Bank of Pennsylvania to the Fidelity National bank from the beginning of the account in February, 1887, and covering the entire period of the account, except Exhibits Nos. 1 to 13, inclusive, attached to the deposition of E. P. Graham in this cause, and make them a part of your deposition, marking them Exhibits "1" to 86, inclusive?

Counsel for complainants objects to the introduction of these letters on the ground that they are immaterial and irrelevant.

144 A. I will.

And thereupon the witness produces the letters, as requested, and said letters are marked Exhibits "1" to "86," inclusive, and are attached to this deposition and made part hereof; to all of which counsel for complainant enters same objection as that entered by him to question # 53.

54 Q. Please examine the letter marked Exhibit "B," attached to the answer of respondent in this case, and state whether or not that is one of such letters from the Commercial National Bank of Pennsylvania to the Fidelity National bank; and, if so, whether you know whether or not that is the first letter enclosing remittances of items from that bank to the Fidelity National bank.

A. That is the first letter received by the Fidelity National bank containing cash items, as shown by the books of the Fidelity National bank.

55 Q. When a sight item was received by you from the Commercial National Bank of Pennsylvania and credited to them on receipt, as you have described, what, if any, advice was sent, and when, of that credit of such cash item?

A. Why, the total amount of the letter in which the item was received—the total footing of the letter was advised as credited on the same day the letter was received; that was the only advice the Fidelity National bank would give of the items.

56 Q. By total footing do you mean the footing of cash items or footing of time items?

A. Footing of cash items.

145 57 Q. What advice, and when, was sent by you to the Commercial National bank of the credit of a time item when the same was paid?

Counsel for complainant enters his objection as to form of question.

A. Time items were not advised credited until after the Fidelity National bank had received advice of their payment. Time items were always advised one day before they were put on the books of the Fidelity National bank.

58 Q. State whether or not that distinction which you have just described between the time and manner of the advice of cash and of time items was uniformly observed throughout your entire course of dealings with the Commercial National bank.

A. It was the uniform custom in the Fidelity National bank to advise all cash items credited on the day of their receipt, and time items were not advised until they were actually paid.

59 Q. Look at Exhibits "1," "2," "3," "4," "5," "6," "7," "8," "9," and "10," attached to the deposition of E. P. Graham in this cause, being postal cards, and state what they are, if you know.

A. They are all time items sent by the Commercial National bank to the Fidelity National bank for collection and these are advices sent by the Fidelity National bank to the Commercial National Bank of Pennsylvania of their payment; first, it gives the date on the left-hand column, the date of the letter in which the items *was* enclosed to the Fidelity National bank, next the name of the collection or town which it was on, and next the amount of such collection.

146 60 Q. State whether or not that was the form of advice uniformly used and sent to the Commercial National bank for time items.

A. It was for time items. We used a different postal card for cash items.

61 Q. Examine the exhibits now shown you, being marked Exhibits "14," "15," "16," "17," "18," "19," and "20," attached to the deposition of E. P. Graham in this cause, being postal cards, and state what they are, if you know.

A. They are advices of credits of cash items received by the Fidelity National bank from the Commercial National Bank of Pennsylvania, and one of them I see also advises the items entered for collection.

62 Q. State whether or not those last-named exhibits were the usual and regular character of advice of the credit of cash items sent by the Fidelity National bank to the Commercial National Bank of Pennsylvania.

A. They were.

Cross-examination by Mr. HOADLY:

1 X Q. From what books of the Fidelity National bank were those accounts, Exhibits C, D, E, and F, attached to the answer of respondent in this cause, made up and taken?

A. They were taken from the journal of the Fidelity National bank and from the letters of the Commercial National bank and from the accounts current of the correspondents who collected the items and from the ledger of the Fidelity National bank.

147 2 X Q. Who kept the journals and ledger to which you refer?

A. They were kept by about six different clerks. Mr. Waters kept the ledger, Mr. Lucius and Mr. Mackelfresh kept the credit journals on which all mail items were credited, and I kept the collection credits on which all time items were entered up, and there were two or three other boys around the desk.

JOHN F. COLLING, JR.

Duly subscribed and sworn to before me—

J. HARTWELL CABELL,
Special Examiner.

STATE OF OHIO,
Southern District of Ohio, City of Cincinnati, County of Hamilton, } ss:

I, J. Hartwell Cabell, of Cincinnati, Ohio, aforesaid, a special examiner, duly empowered by stipulation filed herein April 28, '88, diligently to examine upon their corporal oaths, before me to be taken, sundry persons as witnesses on the part of either party in a certain cause now pending and undetermined in the circuit court of the United States of America for the western division of the southern district of Ohio, in the 6th circuit, wherein The Commercial National Bank of Pennsylvania is plaintiff and David Armstrong, receiver of the Fidelity National bank, is defendant, touching the premises, do hereby certify that on the 28th day of May, 1888, and the time set forth in the adjournment of the taking of the testimony as herein

appears, personally appeared before me, as such special ex-
148 aminer, at the office of David Armstrong, receiver of the Fidelity National bank, on the corner of 5th and Walnut streets, in the city of Cincinnati, Hamilton county, Ohio, aforesaid, William P. Bradley and John T. Colling, Jr., witnesses in the cause afore-aid on behalf of the defendant, who, having been by me first duly cautioned and sworn to testify the whole truth and being carefully examined, deposed and said as appears by their deposi-ions hereto annexed.

And I further certify that at the examination of the said witnesses there appeared before me George Hoadly, Jr., Esq., on behalf of the complainant, and Joseph Wilby, Esq., on behalf of the respondent.

And I further certify that said depositions were first taken by me in short-hand, according to the stipulation herein contained, and were afterwards transcribed from my notes by me in pursuance with the terms of said stipulation, being the stipulation appearing on the second page of these depositions. I further certify that the said depositions were subscribed by the said witnesses in my presence, and that the same have been retained by me for the purpose of sealing up and directing the same to the clerk of the court as required by law.

And I further certify that I am not of counsel or attorney of either party to the said cause, nor am I in any way interested in the result thereof.

And I further certify that the fee for taking the said depositions, $40.00, is to be paid by the said respondent, and that the same is just and reasonable.

149 In testimony whereof I have hereunto set my hand and seal, at Cincinnati, Ohio, aforesaid, on this 5th day of June, A. D. 1888.

J. HARTWELL CABELL. [SEAL.]

Cincinnati, June, 1888.

Received of Kittredge and Wilby, attorneys for respondent, $40 in full of fee for taking enclosed depositions.

J. HARTWELL CABELL,
Special Examiner.

150 "A."

The Fidelity National bank, Cincinnati, O.

Special Request.

1. Cash items enter on separate sheets; add up, and we will report by total letter.
2. Give name of place on which drafts are drawn.
3. Credit our cash letter on receipt and report by total letter and date.
4. Collections enter on separate sheets, and we will advise by number or date of letter.
5. Report by number all collections.

6. Correspondents must not hold collections for convenience of parties. Protest all papers unless otherwise instructed by us and return immediately.

7. Make all advices on separate sheets or postal.

Exhibit "A" to deposition of John T. Colling, Jr., J. Hartwell Cabell, spe. ex.

151 The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *Feb.* 21, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—	For credit.
	14 70
	18 24
	19 20
	3 75
	158
(1)	500
	470 67
	488 53
	40 50
	159 06
	1,872 65

23. Received Feb. 23, 1887; answered.

Exhibit No. 1 to deposition of John T. Colling, Jr., J. Hartwell Cabell, S. E., master commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

152 The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *Feb.* 23, 1887.

To Fidelity National bank, Cincinnati:

Yours of 21 inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—			For credit.	
J. Dana	304	61	14	
French & Co.	601	25	71	17
Kansas City P. Co.	32		100	
Shenck, N. W.	38	79	29	
			152	97
			266	58
			7	88
			134	56
			193	15
(2)			100	60
			107	22
			150	73
			5	20
			763	01
			2,596	07

Received Feb. 25, 1887; answered.

Exhibit No. 2 to deposition of John T. Colling, Jr., J. Hartwell Cabell, S. E., master commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

153 The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *Feb.* 24, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—				For credit.	
Spring & Co.			122 54	131	65
Duncan & Co.			16 27	22	50
H. A. Ridge	157	50		86	15
Int.	4	73		100	
			162 23	50	
Brown, H. & Co.			100	74	15
Brown, N.			16 80	25	
				191	71
				28	21
(3)				4	87
				19	20
				733	44

Received Feb. 26, 1887; answered.

Exhibit No. 3 to deposition of John T. Colling, Jr., J. Hartwell Cabell, S. E., master commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

154 The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *Feb.* 26, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—			For credit.	
Scowbrick	174	80	100	
			25	
			582	92
			102	
(4)			17	15 up.
			827	07

Received Feb. 28, 1887; answered.

Exhibit No. 4 to deposition of John T. Colling, Jr., J. Hartwell Cabell, S. E., master commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

155 The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *Feb.* 25, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—		For credit.
Yates	137 50	9 45
Smith & Brown	36 42	10
		41 60
		81
		64 13
		100
		480 18
		54 90
(5)		184 42
		144 98
		220 58
		995 90
		2,384 14

Received Feb. 28, 1887; answered.

Exhibit No. 5 to deposition of John T. Colling, Jr., J. Hartwell Cabell, S. E., master commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

156 The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *Feb.* 28, 1887.

To Fidelity National bank, Cincinnati:

Yours of -- inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—	For credit.
	277 71
	119 40
	12 50
(6)	9 40
	342 68
	761 69

Received Mar. 2, '87; answered.

Exhibit No. 6 to deposition of John T. Colling, Jr., J. Hartwell Cabell, S. E., master commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house

will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

157 The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *Mar.* 1, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—	For credit.
	100
	171 45
	238 26
	16 80
	88 85
	149 46
(7)	38 06
	8 21
	1 30
	394 81
	1,207 20
[In pencil:]	394 81
	812 39

Received M'ch 3, '87; answered.

Exhibit No. 7 to deposition of John T. Colling, Jr., J. Hartwell Cabell, S. E., master commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

158 The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *March* 2, 1887.

To Fidelity National Bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—		For credit.
Kelber, T. & Co.	656 13	100 00
		100 43
(8)		200 43

Received M'ch 4, '87; answered.

Exhibit No. 8 to deposition of John T. Colling, Jr., J. Hartwell Cabell, S. E., master commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

159 2nd.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *M'ch* 3, 1887.

To Fidelity National Bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—			For credit.
Lewis, C., Hdr. Co.	255 07	Nashville	4 95
		Winchester	31 41
		Frankfort	7 08
(9)		Lexington	289 84
			333 28

Received M'ch 5, '87; answered.

Exhibit No. "9" to deposition of John T. Colling, Jr., J. Hartwell Cabell, spe. mas. com.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

160 11.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *Mar.* 4, 1887.

To Fidelity National Bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—	For credit.
Helena	115 99
Louisville	48 30
N. Orleans	159 39
Las Vegas	37 50
Evansville	85 33
	300
(10)	746 51

Received Mar. 7, '87; answered.

Exhibit No. 10 to deposition of Jno. T. Colling, Jr., J. Hartwell Cabell, special master commis'r.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such banks or agencies as are employed for the collection of such items.

161 2nd.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *M'ch* 5, 1887.

To Fidelity National Bank, Cincinnati:

Yours of 3 inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—	For credit.
	100
	145 85
	49 15
	76 74
	90 54
	18 72
	191 37
	18 26
(11)	16 06
	78 44
	25
	2 60
	5 90
	300
	143 55
	1,262 18

Received M'ch 7, '87; answered. 7.

Exhibit No. 11 to deposition of John T. Colling, Jr., J. Hartwell Cabell, spe. mas. com.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

162 2nd.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *M'ch* 7, 1887.

To Fidelity National Bank, Cincinnati:

Yours of 5 & 4 inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—	For credit.
	338 10
	554 33
	40 53
	10 70
	20
(12)	963 66
	17 24
	980 90

Received M'ch 9, '87; answered.

Exhibit No. 12 to deposition of John T. Colling, Jr., J. Hartwell Cabell, spe. mas. com.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

163 2nd.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *M'ch* 9, 1887.

To Fidelity National Bank, Cincinnati:

Yours of 7 inst. is received, with enclosure as stated.

Respectfully, KNEEDLER
For Cashier

I enclose for collection— For credit.

(13)

25	
252	25
158	80
30	
67	59
496	37
370	76
1,400	77
370	76
1,030	01

[In pencil:]

Received M'ch 11, '87; answered.

Exhibit No. 13 to deposition of John T. Colling, Jr., J. Hartwell Cabell, spe. mas. com.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

164 2nd.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *M'ch* 8, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection— For credit.

(14)

200	
100	
200	
127	18
100	
126	25
200	
103	67
273	76
64	32
4	93
179	36
100	
172	53

45	69
3	30
19	20
4	80
2,024	99

Received M'ch 10, '87; answered.

Exhibit No. 14 to deposition of John T. Colling, Jr., J. Hartwell Cabell, spe. mas. com.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

165 2nd.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *Mar.* 10, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—		For credit.	
Folds & G.	300	68	257 01
			234 52
			28 50
			78 50
			158
(15)			3 61
			25 50
			45 50 up.
			831 14

Received M'ch 12, '87; answered.

Exhibit No. 15 to deposition of John T. Colling, Jr., J. Hartwell Cabell, spe. mas. com.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

166 2nd.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *M'ch* 12, 1887.

To Fidelity National bank, Cincinnati:

Yours of 10 inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—			For credit.
Kellon, Theo.	up	56 25	251 21
			159 80
			121 92
			50
			32 50
(16)			615 43
			400
			1,015 43

Received Mar. 14, '87; answered.

Exhibit No. 16 to deposition of John T. Colling, Jr., J. Hartwell Cabell, spe. mas. com.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

167 2nd.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *M'ch* 11, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—	For credit.
	45
	48 63
(17)	127 60
	221 23

Received M'ch 14, '87; answered.

Exhibit No. 17 to deposition of John T. Colling, Jr., J. Hartwell Cabell, spe. mas. com.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

168 3rd.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *M'ch* 14, 1887.

To Fidelity National bank, Cincinnati:

Yours of 12 inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—	For credit.
Detroit	376 60
Bristol, Tenn.	25
Muskegun	59 61
Louisville	27 65
Milwaukee	10 36
Nashville	81 08
Davenport	250 31
Sanazer	511 97
Minneapolis	335 22
G. Rapids	334 22
Indianapolis	568 66
Do.	485 40
(18)	3,066 08

Received M'ch 16, '87; answered.

Exhibit No. 18 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special mas. com.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

169 3rd.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *M'ch* 14, 1887.

To Fidelity National bank, Cincinnati:

Yours of 12 inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—		For credit.
Odell & P.	25 50	122 23
Nuel, T. A.	25 50	200 22
Kenbergen	128 10	165 07
Glosone	25 50	91 38
Little	180	99 32
Whitehurst	95	43 18
Jeft. & A.	28 25	41 78
Billwolly	25 50	65 76
		3 16
(19)		832 10

Received M'ch 17, '87; answered.

Exhibit No. 19 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special mas. com.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

170 3rd.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *M'ch* 16, 1887 *87*.

To Fidelity National bank, Cincinnati:

Yours of 14 inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—	Coll.	For credit.
Rosenheim, B. & Co.	6 10	152 29
(20)		

Received M'ch 18, '87; answered.

Exhibit No. 20 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special mas. com.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

171 3rd.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *M'ch* 17, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—	For credit.
	140
	300
	13 45
(21)	400
	227 67
	61 05
	1,142 17

Received M'ch 19, '87; answered.

Exhibit No. 21 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special mas. com.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

172 3rd.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *M'ch* 18, 1887.

To Fidelity National Bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for cash—		For credit.
Connersville	47 10	
Omaha	50	
Frankfort	7 08	
Rogersville	52	
	156 18	(22)
Detroit	249 41	
	405 59	

Received M'ch 21, '87; answered.

Exhibit No. 22 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special mas. com.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

173 3rd.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *M'ch* 19, 1887.

To Fidelity National Bank, Cincinnati:

Yours of 17 inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—	Coll.	For credit. Cash.
Bigley, M.	332	25 50
Nelson, A.	303 15	20 50
		36
		5 20
		23 10
(23)		1,600
		3 28
		1,713 58

Received M'ch 21, '87; answered.

Exhibit No. 23 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special mas. com.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for

collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

174 3rd.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *M'ch* 18, 1887.

To Fidelity National Bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for cash—		For credit.
Memphis	60	
Levy & Son	152 29	
N. Orleans	300	
Kansas City	66	(24)
Murfreesboro'	383 46	
Memphis	100	
	1,061 75	

These items were charged to you M'ch 16, but were sent in error to another bank.

Received M'ch 21, '87; answered.

Exhibit No. 24 to deposition of Jno. T. Colling, Jr., J. Hartwell Cabell, special mas. com.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

175 3rd.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *M'ch* 21, 1887.

To Fidelity National Bank, Cincinnati:

Yours of 19 inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection— For credit.

Karer & Co.	26	Le Oerne	3
		Chattanooga	100
		Memphis	400
		Russellville	410 13
		Paris	1,201 98
(25)		Marshaltown	350
		St. Paul	79 14
		E. Saginaw	112 03
		Herrodsburg	9 81
			2,666 09

Received M'ch 23, '87; answered.

Exhibit No. 25 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special mas. com.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

176 4th.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *M'ch* 22, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection— For credit.

Brown, H. & C.	137 25	100
Gates, H. & C.	60	100
Stock boug.	2,500	240
Int.	39 17	43 55
		77 30
		198 89
		36 12
		106 47
		165 29
		50
(26)		79 70
		20 13
		72 40

	150
	7
	36 75
	19 20
	1,502 80

Received M'ch 24, '87; answered.

Exhibit No. 26 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special mas. com.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

177 4th.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *March* 23, 1887.

To Fidelity National bank, Cincinnati:

Yours of 21st inst. is received, with enclosure as stated.

Respectfully, KNEEDLER
For Cashier.

I enclose for collection—			For credit.
Chamberlin	up	132 77	64 13
			53 39
			29 19
			5 15
(27)			190 25
			20 50
			362 61

Received M'ch 25, '87; answered.

Exhibit No. 27 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special mas. com.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

178 4th.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *M'ch* 24, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—	For credit.
Kansas City	66
Lebourne	150
Connellsville	8 08
(28)	224 08

Received M'ch 26, '87; answered.

Exhibit No. 28 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special mas. com.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

179 4th.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *M'ch* 25, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—		For credit.
Ward	800	48 48
Dickman	176	20 36
Indianapolis, Ind.	267 38	16 80
Omaha, Rep.	180 25	223 95
Deurdroff & Son	26 65	
(29)		309 59

Received M'ch 28, '87; answered.

Exhibit No. 29 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special mas. com.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

180 4th.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *M'ch* 26, 1887.

To Fidelity National bank, Cincinnati:

Yours of 24 inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—	For credit.	
	150	Bristol.
	9 89	Detroit.
	1 62	Louisville.
	9 20	Bloomington.
(30)	166 50	Iowa City.
	168	Sheldon.
	354 37	Milwaukee.
	507 76	Terre Haute.
	1,367 34	

Received M'ch 28, 1887; answered.

Exhibit No. 30 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special mas. com.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

181 4th.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *M'ch* 28, 1887.

To Fidelity National bank, Cincinnati:

Yours of 25 & 26 inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—		For credit.	
Johnston, ag't	234 45	16 01	N. Orleans.
Chamberlin, tres.	132 77	208 95	Portland.
		57 30	Winchester.
		37 24	Indianapolis.
		4 10	Rochester.
		3 12	Mich.
		61 32	Milwaukee.
		1 57	Detroit.
		1 64	Ind.
		1 70	"
		4 39	St. Paul.
		1 37	Lawrence.
		1 19	Fort Worth.
Am't for'd	2,099 52	4 97	Kansas City.
Detroit	450 56	288 15	Bloomington.
Burlington	403 59	10 15	Lawrence.
		5 21	Ind.
	2,953 67	298 81	Penn.
		27 99	Terre Haute.
		13 33	Dallas.
(31)		1,048 39*	
		974 28	
		60 16	
		16 57	
		2,953 61*	

Received M'ch 30, '89; answered.

Exhibit No. 31 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special mas. com.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

182 4th.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *May* 29, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

* In pencil.

I enclose for collection— For credit.

(32)

182 41
125 74
46 08
151 20
140 52
27 62
39 50
55 30
40 85
26 37
5 20
25 70
866 49

Received M'ch 31, '87; answered.

Exhibit No. 32 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special mas. com.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

183 4th.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, 3, 31, 1887.

To Fidelity National bank, Cincinnati:

Yours of 29 inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection— For credit.

(33)

30 30	Lancaster.
12 35	Rockport.
106 70	Chattanooga.
68 16	Memphis.
217 51	

Received April 2, '87; answered.

Exhibit No. 33 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special mas. com.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

184 5th.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *Mar.* 30, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—		For credit.	
Pierce & Co.	129 29	13 68	Memphis.
Sander & Co. int.	218 59	130	
Courier Jour. Job P. Co.	346 39		
(34)		143 68	

Received Apr. 1, '87; answered.

Exhibit No. 34 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special mas. com'r.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible onoy for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

185 5th.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *Apr.* 1, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

In enclose for collection—	For credit.	
	100	Indianapolis.
	7 08	Frankfort.
(35)	58 10	Du Quin.
	165 18	

Received —; answered.

Exhibit No. 35 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special mas. com'r. 4, 4.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible onoy for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

186 5th.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *Apr.* 2, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—		For credit.	
Strouse & Co.	385	80 50	Louisville.
		54	McMinnville.
		133 50	Indianapolis.
(36)		108 15	Nashville.
		376 15	

Received Apr. 4, '87; answered.

Exhibit No. 36 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special mas. com'r. 4.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible onoy for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

187 5th.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, 4, 4, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfuily, KNEEDLER,
For Cashier.

I enclose for collection— For credit.

	138	Morris.
	32 20	Portland.
	26 90	Kansas City.
	197 10	
	300	Shelbyville.
(37)	690 59	Nashville.
	382 32	Knoxville.
	908 48	Indianapolis.
	327 84	Kokomo.
	476 27	Omaha.
	3,282 60	

Received Apr. 6, '87; answered.

Exhibit No. 37 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special mas. com'r.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible onoy for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

188 5th.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *Apr.* 6, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection— For credit.

	20	Detroit.
	24 03	Milwaukee.
(38)	155	Do.
[In pencil:]	175 00	

Received Apr. 8, '87; answered.

Exhibit No. 38 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special mas. com'r.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible onoy for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

189 5th.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, 4, 7, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection— For credit.

	19	20	N. Orleans.
	3		Omaha.
	20		Detroit.
	256	91	Lincoln.
(39)	155	46	Harrison.
	25	38	Louisville.
	390	23	St. Paul.
	870	18	

Received Apr. 9, '87; answered.

Exhibit No. 39 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special mas. com'r.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible onoy for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

190 5th.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, 4, 9, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—	For credit.	
	7 36	Louisville.
	11 06	Kansas City.
(40)	18 42	
	600	
	618 42	

Received Apr. 11, '87; answered.

Exhibit No. 40 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special mas. com'r.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible onoy for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

191 5th.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *Apr.* 12, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—		For credit.
Kenberger	108	35 25
Pastine	108	34 01
Pierce & Co.	136 55	415 87
		349 70
		153 33
		161 82
		185
(41)		166 24
		4 50
		4 32
		26
		1,536 04

Received Apr. 14, '87; answered.

Exhibit No. 41 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special mas. com'r.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts,

checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible onoy for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

192 6th.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *Apr.* 11, 1887.

To Fidelity National bank, Cincinnati:

Yours of 8 inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—	For credit.
	239 13
	150
	13 35
	501 13
	79 92
	38 13
(42)	4 22
	1,551 04
	600
	1,922 02
	5,098 94

Received Apr. 13, '87; answered.

Exhibit No. 42 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special master com'r.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

193 6th.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *Apr.* 13, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—		For credit.
Burford	30 80	1 58
		27 55
(43)		25
		54 13

Received Apr. 15, '87; answered.

Exhibit No. 43 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special master com'r.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

194 6th.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *April* 14, 1887.

To Fidelity National bank, Cincinnati:

Yours of 12th inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—		For credit.
Adams	25 50	173 06
Sharps	25 50	35
Zhinder	25 50	64 76
		3 60
		2 85
		169 03
(44)		184 35
		632 65

Received Apr. 16, '87; answered.

Exhibit No. 44 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special master com'r.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

195 6th.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *Apr.* 15, 1887.

To Fidelity National bank, Cincinnati:

Yours of 13 inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—	For credit.
	258 50
	20 20
	37 69
	45 90
	278 55
	55
(45)	86 75
	40 14
	25
	161 21
	438 15
	1,246 06
	92 14
	2,785 29

Received Apr. 18, '87; answered.

Exhibit No. 45 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special master com'r.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

196 6th.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *Apr.* 16, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection— For credit.

	1 25
	10 75
	348 03
	200
	99 37
(46)	57 55
	36 14
	896 35
	1,649 44

Received Apr. 18, '87; answered.

Exhibit No. 46 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special master com'r.

Endorse all notes, drafts, or other evidences of debt. "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

197 6th.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *Apr.* 18, 1887.

To Fidelity National bank, Cincinnati:

Yours of 16 inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—		For credit.	
Penn.	100	8 52	Detroit.
Nashville	30 36	12	"
Morristown	341 20	45 50	Milwaukee.
Knoxville	133 64	133	Omaha.
Lowell	453 62	4 26	Ashland.
		36	Louisville.
	4,966 12	41 66	Frankfort.
		60 49	Des Moines.
		10	Knoxville.
		100	Meridian.
		10 62	Frankfort.
		1 50	Melbrooke.
		96 14	Knoxville.
		28 52	Rushville.
(47)		10	Morristown.
		41 25	Winchester.
		200	N. Orleans.

511	57	Galveston.
272	06	Do.
1,341	61	Belvit.
46	80	Terre Haute.
500		New Castle.
334	32	Fort Wayne.
109		Winchester.

Received Apr. 20, '87; answered.

Exhibit No. 47 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special master com'r.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

198 6th.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *Apr.* 19, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—		For credit.	
Huffinger & Bro.	12	32	
		21	87
		393	45
		3	05
		140	
		31	20
(48)		5	20
		23	38
		60	33
		25	
		703	48

Received Apr. 27, '87; answered.

Exhibit No. 48 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special master com'r.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

199 6th.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *Apr.* 21, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—		For credit.
Cofferfritz, F. A.	268 05	23 50
		74 40
		272 22
(49)		86 20
		237 02
		693 34

Received Apr. 21, '87; answered.

Exhibit No. 49 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special master com'r.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

200 7th.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *Apr.* 22, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—	For credit.
	52 11
	5
	21
(50)	8 08
	23 14
	109 33

Received Apr. 25, '87; answered.

Exhibit No. 50 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special mas. commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial Nat. Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for collection of such items.

201 7th.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *Apr.* 23, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER
For Cashier.

I enclose for collection—	For credit.
	205 56
	1 34
	150
(51)	217 55
	62 72
	637 17

Received Apr. 25, '87; answered.

Exhibit No. 51 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special mas. commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial Nat. Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for collection of such items.

202 7th.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *Apr.* 25, 1887.

To Fidelity National bank, Cincinnati:

Yours of 22 inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection— For credit.

	18 23
	2 50
	1,081 21
	270 58
	84 40
	151 64
(52)	522 99
	19
	312 55
	2,463 10
	400
	2,863 10

Received Apr. 27, '87; answered.

Exhibit No. 52 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special mas. commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial Nat. Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for collection of such items.

203 7th.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, 4, 26, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection— For credit.

	44 10
	179 12
	209 03
	18 37
	69 85
	30 67
	292 13
	62 02
(53)	36 97
	61 39
	148 23

	218 45
	30 86
	48 79
	4 91
	1,454 89

Received Apr. 28, '87; answered.

Exhibit No. 53 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special mas. commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial Nat. Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for collection of such items.

204 7th.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *Apr.* 27, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—	For credit.
Memphis	42 65
St. Paul	9
Eckerly	65 62
Bay City	130 40
Ind.	17 46
Chattanooga	28 83
Houston	664 37
(54)	
	958 33

Received Apr. 29, '87; answered.

Exhibit No. 54 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special mas. commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial Nat. Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for collection of such items.

205 7th.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *Apr.* 28, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—		For credit.
H. Crie	150	350
		8 63
		62 39
		150
		441 10
		1,131 67
		113 55
(55)		20 65
		328 09
		68 88
		24
		2,698 96

Received Apr. 30, '87; answered.

Exhibit No. 55 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special mas. commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial Nat. Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for collection of such items.

206 7th.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *Apr.* 30, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—		For credit.
De Hart & Co.	200	2 55
		911 46
		585
		28 31
		22 72
(56)		4 65
		392 43
		400
		508 47
		2,855 59

Received May 2, '87; answered.

Exhibit No. 56 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special mas. commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial Nat. Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for collection of such items.

207 7th.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *Apr.* 29, 1887.

To Fidelity National bank, Cincinnati:

Yours of 27 inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—		For credit.
Sievers C. Hdw. Co.	277 58	3 90
Stens Kemerly & S.	110 21	9 12
		18 75
		5 75
(57)		18 10
		21 37
		76 99

Received May 2, '87; answered.

Exhibit No. 57 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special mas. commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial Nat. Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection

or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for collection of such items.

208 8.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *May* 2, 1887.

To Fidelity National bank, Cincinnati:

Yours of 30 inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection— For credit.

	15 25
	62 80
	23
	152 11
	207 63
	142 87
	394 81
(58)	102 97
	109 85
	461 10
	1,672 39
[In pencil:]	394 81
	1,277 58

Received May 4, '87; answered.

Exhibit No. 58 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special master commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payaboe at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

209 8.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *May* 3, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, E. P. GRAHAM, *Cashier*,
Per KNEEDLER.

I enclose for collection—			For credit.	
Gatasy	550		42	
Pohick & U.	100	79	11	
			6	08
Taylor	494	60	26	10
Bigley	296	39	277	58
			47	
			400	
			809	76
(59)			42	
[In pencil:]			767	76

Return without prot. De Hart & Co. $200 & int. sent in our letter Apr. 30; due at Nashville, Tenn.

Received May 5, '87; answered.

Exhibit No. 59 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special master commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payaboe at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

210 The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *May* 5, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, E. P. GRAHAM, *Cashier*,
Per KNEEDLER.

I enclose for collection—	For credit.	
	165	
	10	62
	5	20
	307	55
	401	59
(60)	250	
	197	
	54	50
	149	50
	18	
	1,558	96

Received May 7, '87; answered.

Exhibit No. 60 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special master commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

211 The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *May* 7, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, E. P. GRAHAM, *Cashier*,
Per K.

I enclose for collection—	For credit.
	200
	8 08
	26 40
	37 75
	150 15
	10 20
	21 75
	13 30
(61)	66 92
	79 15
	254 88
	868 58
	19
	887 58

Received May 9, '87; answered.

Exhibit No. 61 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special master commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

212 8.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *May* 6, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, E. P. GRAHAM, *Cashier*,
Per KNEEDLER.

I enclose for collection—	For credit.
	131 85
	16 48
	100 69
	33 10
	641 86
(62)	71 91
	300 05
	765 45
	2,061 39

Received May 9, '87; answered.

Exhibit No. 62 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special master commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

213 8.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *May* 9, 1887.

To Fidelity National bank, Cincinnati:

Yours of 6 inst. is received, with enclosure as stated.

Respectfully, E. P. GRAHAM, *Cashier*,
Per KNEEDLER.

I enclose for collection—	For credit.
	15 75
	55
	403 85
	256
	29 67
	80 46

(63)

107 75
10
236 50
483 96
343 82
318 85

2,335 61

Received May 10, '87; answered.

Exhibit No. 63 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special master commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

214 8.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *May* 10, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, E. P. GRAHAM, *Cashier*,
Per K.

I enclose for collection—		For credit.
Moore, Garner & Co.	30 70	35 25
		56 17
		175
		300
		100
		204 58
		109
		29 93
		16 17
		35 21
(64)		212 57
		200
		31 72
		169
		50 25
		177 21
		50
		17
		1,869 06

Received May 12, '87; answered.

Exhibit No. 64 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special master commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

215 8.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *May* 11, 1887.

To Fidelity National bank, Cincinnati:

Yours of 7 & 9 inst. is received, with enclosure as stated.

Respectfully, E. P. GRAHAM, *Cashier*,
Per K.

I enclose for collection—		For credit.	
H. Crie	149	175 33	
Odell & P.	25 50	51 25	
		200	
		69 89	[In
		163 76	pencil:]
		104 74	33
(65)		102 60	48
		493 64	—
		503 62	34
			36
		1,864 83	18

Received May 13, '87; answered.

Exhibit No. 65 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special master commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

216 9.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *May* 12, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, E. P. GRAHAM, *Cashier*,
Per K.

I enclose for collection—		For credit.
Thanks for the stamp.		12
		147 79
		100
		9 18
(66)		12 73
		281 70

Received May 14, '87; answered.

Exhibit No. 66 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special master commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Penn. or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

217 9.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *May* 13, 1887.

To Fidelity National bank, Cincinnati:

Yours of 11 inst. is received, with enclosure as stated.

Respectfully, E. P. GRAHAM, *Cashier*,
Per K.

I enclose for collection—		For credit.
Holding, Hotrock & Co.	128 26	3 90
		2 99
		3
		1
		85 12
		127 77
		110 83
(67)		40 05
		106 69
		481 35
	[In pencil:]	481 35

Received May 16, '87; answered.

Exhibit No. 67 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special master commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Penn. or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

218 9.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *May* 14, 1887.

To Fidelity National bank, Cincinnati:

Yours of 12 inst. is received, with enclosure as stated.

Respectfully, E. P. GRAHAM, *Cashier*,
Per KNEEDLER.

I enclose for collection—	For credit.
	250
	174 25
	76 32
	39 70
(68)	5
	157 27
	702 54

Received May 16, '87; answered.

Exhibit No. 68 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special master commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Penn. or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

219 9.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *May* 16, 1887.

To Fidelity National bank, Cincinnati:

Yours of 14 inst. is received, with enclosure as stated.

Respectfully, E. P. GRAHAM, *Cashier*,
Per KNEEDLER.

I enclose for collection—	For credit.
	31 73
	50
MAY 3D.—We wrote to you to return without protest note of De Hart & Co., $200 & int., due at Nashville, Tenn., which you return to us this a. m. protested, & our correspondent refuses to pay the prot. fees and would like to know why it was protested.	50
	28 50
	66 36
	47 95
	7 25
	88
	21 95
Sent Apr. 30th; due at Nashville, Tenn.	200
	295 72
Received May 23, '87; answered.	100
	29 93
	361 02
	153 88
	236 56
(69)	215 19
	30 40
	49 12
	8 53
	2,072 09

[Written across the face in blue pencil:] Give us our cr. & date you sent to us.

Received May 18, '87; answered.

Exhibit No. 69 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special master commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Penn. or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

220 9.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *May* 17, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, E. P. GRAHAM, *Cashier*,
Per K.

I enclose for collection—		For credit.
Mitz Co.	16 28	329 50
Reynold & G.	67 75	15 15
Stewart & B.	206 52	7 45
Tompkins	37 77	47
Dororville	62 48	5
		103 40
		120
		7 65
(70)		5 20
		1 58
		61 24
		703 17

Received May 19, '87; answered.

Exhibit No. 70 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special master commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Penn. or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

221 The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *May* 18, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, E. P. GRAHAM, *Cashier*,
Per K.

I enclose for collection—	For credit.
	1 80
	297 28
(71)	141 82
	440 90

Received May 20, '87; answered.

Exhibit No. 71 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special master commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Penn. or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

222 The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *May* 19, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, E. P. GRAHAM, *Cashier*,
Per K.

I enclose for collection—		For credit.
		137 05
		10 62
		44 10
(72)		40
		75 38
		82 41
		389 56

Received May 21; answered.

Exhibit No. 72 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special master commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Penn. or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

223 The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *May* 21, 1887.

To Fidelity National bank, Cincinnati:

Yours of 19th inst. is received, with enclosure as stated.

Respectfully, KNEEDLER,
For Cashier.

I enclose for collection—		For credit.	
Landen & Co.	1,000	2,800 00	out
		26 40	
		83 13	
		158 40	
		5 71	
		104 09	
(73)		334 30	
		114 95	
		51 30	
		3,678 28	
		2,800	out
		878 28	

Received May 23, '87; answered.

Exhibit No. 73 to deposition of John T. Colling, Jr., J. Hartwell Cabell, special master commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Penn. or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

224 10.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *May* 20, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, E. P. GRAHAM, *Cashier*,
Per KNEEDLER.

I enclose for collection—	For credit.
	7 20
	382 30
	184 80
(74)	133 02
	6
	46 77
	760 09

Received May 23, '87; answered.

Exhibit No. 74 to deposition of Jno. T. Colling, Jr., J. Hartwell Cabell, special master commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

225 10.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *May* 23, 1887.

To Fidelity National bank, Cincinnati:

Yours of 20 inst. is received, with enclosure as stated.

Respectfully, E. P. GRAHAM, *Cashier*,
Per KNEEDLER.

I enclose for collection— For credit.

(75)

8 71
32 50
25 44
436 85
133 35
116 50
753 55
491 39
400 00
1,644 94

Received May 25, '87; answered.

Exhibit No. 75 to deposition of Jno. T. Colling, Jr., J. Hartwell Cabell, special master commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

226 10.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *May* 24, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, E. P. GRAHAM, *Cashier*,
Per KNEEDLER.

I enclose for collection— For credit.

(76)

Evansville, J. & Co. ---------- 105 28 167 53
196 50
239 13
151 25
239 83
50
29 22
49 80
113 90
138 49
53 32
250
32 16

124 44
63 50
221 48
2,120 55

Received May 26, '87; answered.

Exhibit No. 76 to deposition of Jno. T. Colling, Jr., J. Hartwell Cabell, special master commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

227 10.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *May* 25, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, E. P. GRAHAM, *Cashier*,
Per KNEEDLER.

I enclose for collection— For credit.

4 77
3 16
40 72
496 53 up.
545 18
(77) 300
845 18
[In pencil:] 496 53 out.
348 65

Received May 27, '87; answered.

Exhibit No. 77 to deposition of Jno. T. Colling, Jr., J. Hartwell Cabell, special master commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

228 10.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *May* 20, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, E. P. GRAHAM, *Cashier*,
Per KNEEDLER.

I enclose for collection—		For credit.
Sworbrick	177 21	138 14
		48 88
		72 12
(78)		457 02
		716 16

Received May 28, '87; answered.

Exhibit No. 78 to deposition of Jno. T. Colling, Jr., J. Hartwell Cabell, special master commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

229 10.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *May* 28, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, E. P. GRAHAM, *Cashier*,
Per KNEEDLER.

I enclose for collection—	For credit.
	145 35
	200
	240 09
	145 85
[In pencil:]	22 24
Please state on what place	17 55
checks are drawn.	200
	3 61
	165 54
	1 04
	5 58

(79)

2	44
5	51
15	87
1	59
1	76
10	52
75	97
9	83
2	32
1	84
83	13
43	60
1,401	23

Received May 31, '87; answered.

Exhibit No. 79 to deposition of Jno. T. Colling, Jr., J. Hartwell Cabell, special master commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

230 10.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *May* 27, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, E. P. GRAHAM, *Cashier*,
Per KNEEDLER.

I enclose for collection—	For credit.	
Crowdull	46 50	72
Ernest & Bauer	140	7 50
Begley M.	352	3 90
Key & Co.	244 77	144 42
		1 90
		24 84
		254 56

(80)

Received May 31, '87; answered.

Exhibit No. 80 to deposition of Jno. T. Colling, Jr., J. Hartwell Cabell, special master commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

231 10.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *May* 31, 1887.

To Fidelity National bank, Cincinnati:

Yours of 27 inst. is received, with enclosure as stated.

Respectfully, E. P. GRAHAM, *Cashier*,
Per KNEEDLER.

I enclose for collection—	For credit.
	90 14
	197 43
	152
	27 76
	90 95
	280 61
	425 46
	12 69
(81)	64 55
	336 70
	52 27
	100
	100
	94 28
	290 45
	58 29
	200
	2,574 28

Received June 2, '87; answered.

Exhibit No. 81 to deposition of Jno. T. Colling, Jr., J. Hartwell Cabell, special master commissioner.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, coupons, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

232 11.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *June* 1, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, E. P. GRAHAM, *Cashier*,
Per KNEEDLER.

I enclose for collection—			For credit.
Ricketts	up	16 13	40
			25
			186 13
			100
			23 76
			200 48
(82)			31 85
			7 44
			7 40
			112 72
			1,023 38
			42 53
			1,800 69
		[In pencil:]	1,800 69

Received June 3, '87; answered.

Exhibit No. 82 to deposition of Jno. T. Colling, Jr., J. Hartwell Cabell, special master commis'r.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such banks or agencies as are employed for the collection of such items.

233 11.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *June* 2, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, E. P. GRAHAM, *Cashier*,
Per KNEEDLER.

I enclose for collection—		For credit.
Pierce & Co.	up	24 83 / 24 48
Lindsay		141 60 / 60
Sheer Albright		155 10 / 193 53
Walensley & Co.		279 30 / 91 89
Begley		372 46 / 467 79
		300
(83)		1,137 69

Received June 4, '87; answered.

Exhibit No. 83 to deposition of Jno. T. Colling, Jr., J. Hartwell Cabell, special master commis'r.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

234 11.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, 6, 3, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, E. P. GRAHAM, *Cashier*,
Per KNEEDLER.

I enclose for collection—	For credit.
	152 20
	134 44
	3 76
	31 83
	368 74
(84)	140 26
	37 50 up.
	264 12 up.
	1,132 85

Received June 6, '87; answered.

Exhibit No. 84 to deposition of Jno. T. Colling, Jr., J. Hartwell Cabell, special master commis'r.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such banks or agencies as are employed for the collection of such items.

235 11.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *June* 4, 1887.

To Fidelity National bank, Cincinnati:

Yours of — inst. is received, with enclosure as stated.

Respectfully, E. P. GRAHAM, *Cashier*,
Per KNEEDLER.

I enclose for collection—	For credit.
	155 23
	6 49
	235 30
	3 43
	105 21
	150
	120 17
(85)	480 35
	1,256 18

Received June 6, '87; answered.

Exhibit No. 85 to deposition of Jno. T. Colling, Jr., J. Hartwell Cabell, special master commis'r.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such banks or agencies as are employed for the collection of such items.

236 11.

The Commercial National Bank of Pennsylvania.

PHILADELPHIA, *June* 6, 1887.

To Fidelity National bank, Cincinnati:

Yours of 3 inst. is received, with enclosure as stated.

Respectfully, E. P. GRAHAM, *Cashier*,
Per KNEEDLER.

I enclose for collection—			For credit.		
		30	25	*3,604	97
		83	62	25	
		130	99	504	40
		25	35	up. 106	88
		7	80		
		67	69	4,241	25
		151	30		
		75			
		21	15		
		68	02		
		625	20		
(86)		217	30		
		586	52		
		20	45		
		127	43		
		125			
		523	40		
		209	31		
		84	10		
		348	29		
		11	05		
		65	75		
		3,604	97		

Received June 8, '87; answered.

Exhibit No. 86 to deposition of Jno. T. Colling, Jr., J. Hartwell Cabell, special master commis'r.

Endorse all notes, drafts, or other evidences of debt, "Pay the Commercial National Bank of Pennsylvania or order." All notes, drafts, checks, or acceptances discounted or received for collection or as cash which are payable at points outside of this clearing-house will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such banks or agencies as are employed for the collection of such items.

237 And afterwards, to wit, on the 9th day of March, A. D. 1889, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Journal Y, p. 245.

This cause came on this day to be further heard, and, the court being of opinion that it is necessary for the proper determination of this case that it be referred to a master commissioner to ascertain and report certain facts, it is ordered, at the suggestion of counsel,

* In pencil.

that B. R. Cowen, Esq., be, and he is hereby, appointed master to report, with his findings thereon, to this court the following facts:

1st. What amount, if any, of the proceeds of the notes, drafts, and other commercial paper received from complainant by the Fidelity National bank, endorsed for collection for complainant, between June 4 & June 20, 1887, was paid to the receiver of said Fidelity bank after the failure thereof, setting out particularly what items and what amount thereof.

2nd. What amount, if any, of the proceeds of such paper was remitted to and received by the Fidelity National bank between said dates, and what amount thereof is traceable to David Armstrong, receiver, setting out what items and the amounts thereof.

3rd. What amount, if any, of the proceeds of such paper was collected by correspondents of the Fidelity National bank and credited, with the assent of the Fidelity National bank or the receiver thereof, by them on indebtedness due them from said Fidelity National bank.

238 4th. What amount of cash was on hand in the said Fidelity National bank at the time of its failure and how much cash was taken in and paid out during said period from June 4 to June 20, inclusive, from any and all other sources.

And afterwards, to wit, on the 9th day of March, A. D. 1889, the following oath of special master was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Oath of Special Master B. R. Cowen.

U. S. Circuit Court, S. D. O.

THE COMMERCIAL BANK OF PA. *vs.* DAVID ARMSTRONG, Rec'r. } = 4087.

I, B. R. Cowen, having heretofore been appointed special master in the above-entitled cause, do solemnly swear that I will faithfully and impartially perform my duties as such master, agreeable to the order of the court, to the best of my ability and understanding, so help me God.

B. R. COWEN.

Sworn to before me and signed in my presence this 9th day of March, A. D. 1889.

B. E. DILLEY,

[SEAL.] *Deputy Clk U. S. Cir. Ct., S. D. O.*

And afterwards, to wit, on the 7th day of May, A. D. 1889, the following report of special master was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

The United States Circuit Court, Southern District of Ohio, Western Division.

THE COMMERCIAL BANK OF PENNSYLVANIA
vs.
DAVID ARMSTRONG, Receiver of the Fidelity National Bank. } No. 4057.

Report of special master.

To the judges of the United States circuit court for the southern district of Ohio:

The undersigned, appointed special master under decree entered in the above-entitled case March 6, 1880, respectfully submits the following report:

By said decree the master was directed to report:

First. What amount if any, of the proceeds of the notes, drafts and other commercial paper received from complainant by the Fidelity National bank, endorsed for collection for complainant, between June 4 and June 20, 1857, was paid to the receiver of said Fidelity bank after the failure thereof, setting out particularly what items and what amount thereof.

Second. What amount if any, of the proceeds of such paper was remitted to and received by the Fidelity National bank between said dates, and what amount thereof is traceable to David Armstrong, receiver, setting out what items and the amount thereof.

Third. What amount if any of the proceeds of such paper was collected by correspondents of the Fidelity National bank and credited with the assent of the Fidelity National bank or the receiver thereof, by them on indebtedness due them from said Fidelity bank.

Fourth. What amount of cash was on hand in said Fidelity National bank at the time of its failure and how much cash was taken in and paid out during said period from June 4 to June 20 from any and all sources.

Statement.

The complainant sent to the Fidelity National bank, endorsed for collection for complainant, between June 4 and June 20, 1857, inclusive, notes, drafts and other commercial paper amounting to $37,620 10
Of this there was returned uncollected 950 32

Leaving to be accounted for as collected $36,669 02

Of that amount the sight or cash items were $34,607 91
And the time items were 2,061 11

$36,669 02

The said sight or cash items were conditionally credited to the account of the complainant by the Fidelity National bank at the

date of their receipt from complainant by the Fidelity bank, and the time paper was credited to complainant by the Fidelity bank or its receiver from time to time as it was collected or as its collection was advised by correspondents of said Fidelity bank.

241 The sight or cash items were thus credited to the account of the complainant by the said Fidelity bank at the date of their receipt by said Fidelity bank and sent to and charged to the accounts of the correspondents of said Fidelity bank and otherwise disposed of as follows:

"Schedule A." Charged to correspondents on credit balances	$7,592 92
"Schedule B." Charged to correspondents on debit balances	6,676 93
Paid by remittances in cash	552 70
Items in dispute of which defendant has no record	33 93
Mt. Vernon item, paid to receiver	49 33
Items returned uncollected	958 23
Total of sight or cash items	$15,864 04

But some of the debit balances of said correspondents above stated were, subsequent to the charges referred to, changed to credit balances by reason of reciprocal transactions if business prior to the failure of the Fidelity bank. By said changes of "Schedule C." debit balances to credit balances $89.96 of the above-stated $6,676.93 as having been charged to said debit balances was wiped out, so to speak, and on the basis of said changes the following statement exhibits the true condition of said collections in respect of debit and credit balances as said balances stood at the time of the failure of the Fidelity bank:

242

"Schedule A."	Charged to correspondents on credit balances existing at the date said charges were made	7,592 92	
	Charged to correspondents on debit balances existing at date said charges were made, but which subsequently became credit balances	89 96	7,682 88
"Schedule B."	Charged to correspondents on debit balances	6,676 93	
"Schedule C."	Charged to correspondents on debit balances existing at date said charges were made, but which subsequently became credit balances	89 96	6,586 97
			$14,269 85

The time items of said commercial paper were disposed of as follows:

"Schedule D."	Charged to correspondents on debit balances	1,804 51	
	Charged to correspondents on credit balances	141 60	
			1,946 11
"Schedule E."	Paid by remittances in cash		602 03
"Schedule F."	Items in dispute		33 93
			$16,851 92

243 The several balances due to the Fidelity bank at the date of its failure from correspondents through which said collections were made have been adjusted and paid to defendant by the said correspondents respectively, excepting the balance due from the 5th National Bank of St. Louis, $1,579.89, which has not been paid, because that bank is in the hands of a receiver and in process of liquidation.

Findings.

First. That of the proceeds of the notes, drafts, and other commercial paper received from complainant by the Fidelity National bank, "endorsed for collection for complainant," between June 4 and June 20, 1887, the following was paid to the receiver of said Fidelity bank after the failure thereof, to wit:

Item "Mt. Vernon"	June 22	$49 31

Second. Of the proceeds of said commercial paper sent by complainant to the Fidelity National bank, as aforesaid, there was remitted to and received by the Fidelity bank between said dates the following:

Connersville, Ind.	June 13	8 08
Cattlesburg, Ky.	" 14	26 26
Kokomo, Ind.	" 16	6 30
C. E. Potts, local	" 16	180 29
Memphis, Tenn.	" 20	31 79
" "	" 20	300 00
Total		$552 72

244 "Schedule G." "Schedule H." "Schedule I." Of the proceeds of said commercial paper it appears that $1,785.76 of the time paper was charged on debit balances by said receiver, after the failure of the Fidelity bank, but of this amount $1,476.08 had been collected by correspondents and credited to the Fidelity by such correspondents prior to said failure, leaving $309.68 as the amount actually collected by correspondents, credited by

said correspondents to the account of the Fidelity bank, and charged to said correspondents respectively by said receiver, and is thus traced to said David Armstrong, receiver.

Third. Of the proceeds of such paper there was collected by correspondents of the Fidelity and credited with the assent of said Fidelity or its receiver on indebtedness due said correspondents from said Fidelity bank:

"Schedule A."	Of sight or cash paper	7,592 92
	Of time paper (Lindsay, Ky.)	141 60
	Total	$7,734 52

Fourth. The cash on hand in the Fidelity bank at the time of its failure was $110,230.03. It is impossible to ascertain the amount of cash paid out and taken in during the period between June 4 and June 20, 1887, as the word "cash" seems to have had a very flexible and comprehensive signification with the managers of the Fidelity bank, and was made to embrace an average of nearly one
245 million of dollars of trash that was utterly worthless, but which figured as that much cash in the alleged assets of the bank during the period embraced in this inquiry.

The accompanying statements embrace the items which go to make up the several amounts stated in this report.

There is also filed herewith a schedule showing daily balances of each of the said correspondent banks on each of the days during said period.

All of which is respectfully submitted.

B. R. COWEN,
Special Master.

Cincinnati, May 6, 1889.

246 SCHEDULE "A."

Schedule of Sight or Cash Items Charged to Correspondents on Credit Balances.

June	9.	Memphis, Tenn.	9 90
		New Orleans	31 20
		Augusta, Ky.	97 25
		Knoxville, Tenn.	25 68
		Oshkosh, Wis.	21 06
	10.	Bristol, Tenn.	25 00
		Milwaukee, Wis.	40 63
		Council Bluffs, Iowa	499 54
		Schuyler	500 00
		Staunton	768 90
		Bristol, Tenn.	341 61
	11.	Detroit	200 00
		Indianapolis	71 17
		Do.	253 00

June 11.	Bay City, Mich.		124 14	
13.	Indianapolis		135 23	
	Do.		56 73	
	St. Paul		10 00	
	Owasso, Mich.		125 55	
	Denver, Col.		100	
	Iowa City		85 74	
15.	Knoxville		133 64	
	Grand Rapids		15 25	
	Lansing, Mich.		72 20	
	Milwaukee		17 81	
	Tennessee		100 05	
	"		24 37	
	"		35 00	
	"		30 17	
	Michigan		364 30	
	Minnesota		55 29	
	Nebraska		236 85	
	Richmond, Ind.		113 80	
	Lincoln, Neb.		132 81	
	Dubuque		741 12	
16.	Grand Rapids		84	
	Chattanooga		131 17	
	New Orleans		148 97	
	Minneapolis		21 00	
	Covington, Ky.		120	
17.	Grand Rapids		990	
			7,090 13	
247				
			7,090 13	
June 17.	Minneapolis		100 00	
18.	Bay City		161 12	
	Carlisle, Ky.		15 25	
20.	Minneapolis		86 21	
	Huntington, Ind.		48 45	
	Detroit		44 83	
	Memphis		13 13	
	Bay City		7 80	
	New Orleans		26 00	
				7,592 92

248 SCHEDULE "B."

Schedule of Sight or Cash Items Charged to Correspondents on Debit Balances.

June 9.	Iowa City	481 29	
10.	San Antonio	496 97	
11.	Wabash, Ind.	72 86	
	Omaha	59 00	
	Do.	10	
13.	Do.	643 70	

June 13.	East Saginaw	236	22	
	Springfield, Mo.	40		
	Mexica, Texas	298	26	
15.	Nashville	77	95	
	Topeka	15	55	
	Indianapolis	17	10	
	Tennessee	50	41	
	Michigan	38	54	
	Kansas	589	34	
	Nashville	37	95	
16.	Carthage, Mo.	5	10	
	Columbia, Tenn.	37	55	
	Kansas City	82	80	
	Fort Worth, Texas	255	00	
17.	Axtell, Neb.	32	50	
18.	Lewisburg, Tenn.	64	18	
	Milwaukee	1,012	96	
20.	St. Paul	45		
	Indianapolis	33	98	
	Sterling	180	80	
	Texarkana	130	81	
	St. Paul	149	50	
	Atchison	1,000		
	Milwaukee	297	15	
	Kansas City	177	16	
	Newport, Ky.	7	30	
				6,676 93

SCHEDULE "C."

Charged to Correspondents on Debit Balances Existing at the Dates said Charges Were Made, but Which Subsequently Became Credit Balances.

June 11.	Wabash	72	86	
15.	Indianapolis	17	10	
				89 96

249 SCHEDULE "D."

Time Paper Charged to Correspondents on Debit Balances.

June 18.	Rors	18	75	
23.	Leavenworth	22	75	
"	Do.	28		
"	Rock Island	86	06	
"	Louisville	155	10	
" "	Wakesly	279	30	
"A." "	Marshall, Texas	16	20	
"	Houston, "	56	25	
"	Kansas City	372	46	
July 8.	Deitz, Louisville	459	96	
June 23.	Omaha	103	35	
July 5.	Clinton, Iowa	173	08	
June 23.	Road House, Ill.	33	25	
				$1,804 51

SCHEDULE "E."

June 13.	Connersville, Ind.	8 08	
14.	Cattellsburg, Ky.	26 26	
16.	Kokomo, Ind.	6 30	
"	C. E. Potts, local	180 29	
20.	Memphis	31 79	
"	"	300 00	
22.	Mt. Vernon	49 31	
			602 03

"SCHEDULE F."

June 15.	Iowa. No record to whom sent	32 43	
18.	Check. " " "	1 50	
			733 93

250 SCHEDULE "G."

Time Paper Charged on Debit Balances by Receiver After Failure of Fidelity.

June 13.	Leavenworth, Kas.	22 75	
"	Do.	28 00	
"	Rock Island	86 06	
"	Louisville	155 10	
"	Wahensley	279 30	
13.	Marshal, Tex.	16 20	
"	Houston "	56 25	
4.	Kansas City	372 46	
10.	Dietz, Louisville	459 96	
"	Omaha	103 35	
13.	Clinton, Ia.	173 08	
10.	Road House, Ill.	33 25	
			1,785 76

SCHEDULE "H."

Items Collected by Correspondents and Credited to the Fidelity by such Correspondents Prior to Failure of said Fidelity.

June 13.	Leavenworth, Kan.	22 75	
"	Do.	28 00	
"	Rock Island	86 06	
"	Louisville	155 10	
"	Wahensley	279 30	
"	Marshal, Tex.	16 20	
"	Houston	56 25	
4.	Kansas City	372 46	
10.	Dietz, Louisville	459 96	
"	Omaha		
			1,476 08

SCHEDULE "I."

Items Collected by Correspondents Credited by said Correspondents to the Ac. of Fidelity & Charged to said Correspondents by said Receiver.

June 21.	Omaha	103 35	
22.	Clinton, Iowa	173 08	
"	Road House, Ill.	33 25	
			309 68

251 And afterwards, to wit, on the 9th day of May, A. D. 1889, the following exceptions to master's report *was* filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Exceptions to Master's Report.

Circuit Court of United States, Southern District of Ohio, Western Division.

THE COMMERCIAL NATIONAL BANK OF PENNSYLVANIA, Complainant,
vs.
DAVID ARMSTRONG, Receiver of the Fidelity National Bank of Cincinnati, Ohio, Defendant.

Exceptions to the report of special master, B. R. Cowen, Esq.

Now comes the complainant, and, not waiving any of the manifold insufficiencies and uncertainties of the report of the special master heretofore filed herein on the 7th day of May, 1889, but insisting on the same, doth except to said report and doth assign for grounds of exception the following, to wit:

1. Said report finds that of the amount of paper endorsed "for collection account of" complainant and transmitted by complainant to the Fidelity Nat. bank between the 4th and 20th of June, 1887, items aggregating $6,586.97 were charged by the Fidelity bank to its correspondents "on debit balances," and that said debit balances did not subsequently become credit balances; which

252 finding complainant understands to say that items of paper endorsed as above were sent by the Fidelity bank to its correspondent banks to be by the latter collected, and that the same were collected to the aggregate amount of $6,586.97, and that the Fidelity National bank was not at said time nor afterwards indebted to said correspondents collecting the same, but that said correspondents held said amounts subject to the order of said Fidelity National bank at the date its receiver was appointed and afterwards subject to the order of said receiver.

Therefore complainant excepts to said report because it does not find in terms that said sum of $6,586.97 was money that came into the hands of the receiver of the Fidelity National bank after his appointment, as the proceeds of paper sent by the complainant to the Fidelity Nat. bank between June 4 and June 20, 1887, endorsed

by complainant to the Fidelity Nat. bank "for collection account of" complainant.

2. That said report shows, as complainant understands it, that the sum of $1,785.81 had been collected by correspondents of the Fidelity bank and credited by said correspondents to said Fidelity bank prior to the time of the appointment of the receiver of the Fidelity bank, but that such sum had not at that time been charged by the Fidelity bank on its books to said correspondents then holding the same, but that the same was afterwards charged on said books by said receiver, and money representing the same was transmitted to or accounted for to him by said correspondents, and that at none of said times was the Fidelity National bank or its receiver indebted to any of said correspondents; and complainant excepts because said master did not find and report said sum of $1,785.81 as money
253 coming into the hands of said receiver the proceeds of paper transmitted to the Fidelity National bank between the 4th and 20th of June, 1887, endorsed by complainant to said Fidelity bank "for collection account of" complainant.

3. The plaintiff excepts because said report ought to have found, but did not find, that the sum of $552.72, which the report states is the amount of money received in currency by the Fidelity National bank as proceeds of commercial paper sent by complainant to the Fidelity National bank, endorsed "for collection account of" complainant, is traceable into the hands of the receiver of the Fidelity National bank.

4. That in said report, at the foot of the second page thereof, it is said, "said sight and cash items were credited to the account of complainant by the Fidelity bank at the date of their receipt by the Fidelity bank," whereas it should have been said that said items were credited subject to payment, as shown by the evidence taken in the case and offered at the hearing thereof.

5. For that the language in said report contained, on the 3rd page thereof, being the words "credited to the account of the complainant by the said Fidelity bank at the date of their receipt by the said Fidelity bank and," should *should* have shown that said items were credited subject to the payment, as shown by the evidence in this case; and, further, for that said language is surplusage, repetition, and redundancy.

Wherefore said complainant doth except as aforesaid and doth pray that said exceptions be sustained, and that the court may reform said report in accordance with said exceptions and con-
254 *con*firm the same as reformed or recommit the same to the master, as it may deem most expedient.

HARMON, COLSTON,
GOLDSMITH & HOADLY,
Solicitors for Complainant.

And afterwards, to wit, on the 20th day of May, A. D. 1889, the following supplementary report of special master was filed in the clerk's office of said court, clothed in the words and figures following to wit:

Supplementary Report.

United States Circuit Court, Southern District of Ohio, Western Division.

THE COMMERCIAL NATIONAL BANK OF PENNSYLVANIA, Complainant,
vs.
DAVID ARMSTRONG, Receiver of Fidelit- Nat. Bank of Cincinnati, O., Defendant. } #4087.

Supplemental report of special master.

To the judges of the United States circuit court for the southern district of Ohio:

The undersigned, respectfully referring to his report herein filed May 7, 1889, begs leave to file the following supplementary report:

In the report of May 7, 1889, the master states that "the several balances due to the Fidelity bank at the date of its failure from correspondents through which said collections were made have
255 been adjusted and paid to the defendant by the *by the* said correspondents respectively."

This is an error, as the balances due from the 5th National Bank of St. Louis *has* not been paid, the affairs of said bank being in the hands of a receiver.

The items of the paper of the complainant sent to said 5th National Bank of St. Louis by the Fidelity National bank between said dates were as follows:

June 10.	San Antonio,	sight	496	97	
June 13.	Springfield, Mo.,	"	40	00	
"	Mexica, Texas,	"	298	26	
June 16.	Carthage, Mo.,	"	5	10	
	Fort Worth, Tex.,	"	255	00	
20.	Tekarkana,	"	130	81	
13.	Wahensley,	time	279	30	
	Marshal,	"	16	20	
	Houston,	"	56	25	
					1,577 89

All of which is respectfully submitted.

B. R. COWEN,
Special Master.

Cincinnati, May 20, 1889.

And afterwards, to wit, on the 27th day of May, A. D. 1889, the following schedules (two) were filed in the clerk's office of said court, clothed in the words and figures following, to wit:

SCHEDULES 1 AND 2.

256 SCHEDULE No. 1. 258

	Metropolitan Nat'l bank, Chicago, Ills.	4th Nat'l bank, Grand Rapids, Mich.	American Nat. b'k, Kansas City, Mo.	First Nat'l bank, Kansas City, Mo.	Milwaukee Nat'l b'k, Milwaukee, Wis.	1st National bank, Nashville, Tenn.	First Nat'l bank, Newport, Ky.	5th Nat'l bank, St. Louis, Mo.
June 9	Cr. 32,926 29	Dr. 1,057 98	Dr. 22,723 54	Cr. 4,020 71	Dr. 321 85	Dr. 7,100 83	*9 Dr. 1,543 36	Dr. 68,940 80
10	" 14,959 52	" 458 40	" 14,355 59	" 3,844 38	" 321 85	" 10,093 26	10 " 3,856 42	" 69,983 70
11	" 50,523 73	" 152 34	" 13,351 81	" 3,565 64	" 1,555 71	" 14,366 33	11 " 3,336 88	" 38,108 67
12	" 50,523 73	" 152 34	" 13,351 81	" 3,565 64	" 916 77	" 14,366 33	12 " 3,336 88	" 38,108 67
13	" 36,453 86	" 1,152 34	" 16,436 61	" 5,740 17	" 1,100 17	" 64,042 28	13 " 3,010 44	" 26,604 03
14	" 16,377 56	" 992 64	" 20,833 41	" 5,620 67	" 1,233 84	" 51,468 33	14 " 3,261 44	" 33,045 51
15	" 3,851 62	" 918 26	" 21,828 78	" 5,415 07	" ----------	" 15,625 13	15 " 3,161 61	" 16,585 50
16	Dr. 2,921 09	" 1,683 18	" 14,440 10	" 5,071 47	" 1,250 06	" 16,395 89	16 " 2,728 67	" 34,384 66
17	Cr. 1,843 92	" 1,921 18	" 17,086 82	" 5,005 27	" 446 29	" 17,778 26	17 " 2,321 56	" 36,323 61
18	Dr. 4,862 46	" 2,107 71	" 20,039 61	" 4,465 65	" 1,901 81	" 8,994 35	18 " 2,475 72	" 27,613 30
19	" 4,862 46	" 2,107 71	" 20,039 61	" 4,465 65	" 1,901 81	" 8,994 35	19 " 2,475 72	" 27,613 30
20	" 41,792 92	" 1,779 67	" 25,170 73	Dr. 5,612 10	" 1,333 16	" 6,776 62	20 " 969 89	" 33,177 95

*This column in pencil.

Schedule No. 1—Continued.

	Allen, Harbeson & Co., Augusta, Ky.	Farmers' & Mechanics' b'k, Attica, Ind.	United States Nat'l b'k, Chicago, Ill.	Euclide Nat'l bank, Cleveland, O.	Farmers' & Traders' Nat'l bank, Covington, Ky.	City Savings bank, Chattanooga, Tenn.	Detroit Nat'l bank, Detroit, Mich.	Com'l Nat'l b'k, Detroit, Mich.
June 9	Cr. 4,823 53	Cr. 552 41	Cr. 5,143 31	Cr. 43,254 10	Cr. 7,050 71	Cr. 14,684 73	Cr. 3,221 38	Cr. 3,047 65
10	" 4,792 33	Dr. 637	" 1,623 17	" 29,345 93	" 13,285 44	" 11,710 58	" 4,220 29	" 3,473 36
11	" 4,763 33	" 637	Dr. 1,368 86	" 35,213 25	" 21,349 58	" 11,568 16	" 3,866 87	" 3,545 99
12	" 4,763 33	" 637	" 1,368 86	" 35,213 25	" 21,349 58	" 11,568 16	" 3,866 87	" 3,545 99
13	" 4,636 80	" 637	" 501 24	" 43,367 07	" 22,300 92	" 11,647 82	" 3,693 09	" 4,067 55
14	" 4,610 38	" 637	" 429 09	" 48,366 79	" 28,120 14	" 10,778 68	" 4,523 73	" 4,847 45
15	" 4,536 13	" 355 80	" 911 39	" 44,633 77	" 06,479 87	" 8,621 50	" 4,454 05	" 893 34
16	" 4,521 13	" 430 80	" 1,001 23	" 44,554 26	" 2,985 09	" 8,064 39	" 4,653 57	" 530 37
17	" 4,482 53	" 8 34	Cr. 1,053 55	" 45,781 29	" 7,292 28	" 8,029 22	" 5,578 07	Dr. 2,292 29
18	" 4,403 01	" 8 34	" 1,057 04	" 46,037 11	" 8,115 07	" 8,029 22	" 5,609 81	" 2,423 14
19	" 4,403 01	" 8 34	" 1,057 04	" 46,037 11	" 8,115 07	" 8,029 22	" 5,609 81	" 2,423 14
20	" 4,221 90	" 74 00	Dr. 765 90	" 48,636 61	Dr. 2,200 21	" 9,545 78	" 5,304 19	Cr. 6,013 17

	Merch. & Mfrs.' Nat'l bank, Detroit, Mich.	Preston bank, Detroit, Mich.	Citizens' Savings b'k, Detroit, Mich.	Decatur Nat'l bank, Decatur, Ind.	Old Nat'l b'k, Grand Rapids, Mich.	First Nat'l bank, Huntington, Ind.	Fletcher's bank, Indianapolis, Ind.	Indianapolis Nat'l b'k, Indianapolis, Ind.
June 9	Cr. 25,171 06	Cr. 1,057 81	Cr. 16,959 45	Cr. 1,610 65	Cr. 9,636 05	Cr. 3,408 40	Cr. 18,468 78	Cr. 23,140 84
10	" 25,583 31	" 957 49	" 23,024 76	" 1,452 58	Dr. 2,347 56	" 3,552 60	" 22,388 99	" 18,130 78
11	" 25,150 50	" 237 49	" 23,343 15	Dr. 763 99	Cr. 2,804 64	" 3,481 42	" 21,389 00	" 13,963 33
12	" 25,150 50	" 237 49	" 23,343 15	" 763 99	" 2,804 64	" 3,481 42	" 21,389 00	" 13,963 33
13	" 25,096 27	Dr. 389 92	" 11,670 45	" 3,535	" 3,023 08	" 3,689 01	" 26,369 37	" 9,640 04
14	" 24,290 34	" 248 94	" 5,526 93	" 2,851 87	Dr. 48 43	" 4,109 96	" 26,846 91	" 6,901 48
15	" 23,763 51	" 248 94	" 5,704 16	" 3,789 19	Cr. 576 74	" 559 53	Dr. 1,985 69	" 3,586 09
16	" 22,149	" 248 94	" 7,583 36	Cr. 13,237 98	" 59 36	" 559 53	" 5,709 90	" 1,188 63
17	" 22,671 66	" 252 44	" 4,388 35	" 16,068 93	Dr. 3,469 61	" 314 47	" 1,597 81	" 14,486 19
18	" 23,127 91	" 252 44	" 5,179 58	" 16,448 93	" 1,929 64	" 744 09	Cr. 1,474 19	" 12,864 74
19	" 23,127 91	" 252 44	" 5,179 58	" 16,448 93	" 1,929 64	" 744 09	" 1,474 19	" 12,864 74
20	" 27,170 82	" 30 19	" 7,134 35	" 16,643 95	Cr. 1,866 28	" 3,563 99	Dr. 3,303 73	" 1,169 20

257 & 259	Mechanics' National b'k, Knoxville, Tenn.	East Tennessee Nat'l b'k, Knoxville, Tenn.	Louisville B'k'g Co., Louisville, Ky.	German Nat'l bank, Lincoln, Neb.	Bank of Commerce, Memphis, Tenn.	Mercantile bank, Memphis, Tenn.	First Nat'l bank, Milwaukee, Wis.	Wisconsin Fire & Marine b'k, Milwaukee, Wis.
June 9	Cr. 7,162 50	Cr. 8,821 48	Dr. 3,968 91	Dr. 86 26	Cr. 9,623 71	Cr. 1,206 95	Cr. 1,764 73	Cr. 11,956 54
10	" 8,074 47	" 8,621 38	Cr. 4,573 66	" 86 26	" 9,252 42	" 1,239 26	" 2,210 03	" 11,347 52
11	" 7,976 04	" 9,121 78	Dr. 89 23	Cr. 2,913 74	" 8,416	" 1,239 26	" 2,108 73	" 10,894 64
12	" 7,976 04	" 9,121 78	Cr. 89 23	" 2,913 74	" 8,416	" 1,239 26	" 2,108 73	" 10,894 64
13	" 8,373 93	" 10,088 18	" 3,858 27	" 2,913 74	" 7,783 88	" 1,239 26	" 6,688 13	" 9,617 78
14	" 8,385 25	" 10,086 30	" 3,900 39	" 2,885 39	" 6,824 20	" 1,239 26	" 6,669 67	" 8,972 17
15	" 8,275 18	" 10,609 46	Dr. 4,604 44	" 2,752 58	" 6,313 60	" 3,723 86	" 6,669 67	" 8,419 04
16	" 8,312 36	Dr. 472 04	" 4,346 96	" 2,742 08	" 6,303 63	" 3,723 86	" 6,669 91	" 7,698 30
17	" 10,211 17	" 405 71	" 1,098 15	" 2,742 08	" 6,290 07	" 3,723 86	" 6,790 86	" 6,870 50
18	" 11,122 29	" 972 95	" 1,595 81	" 2,736 08	" 5,787 65	" 3,723 86	" 3,709 86	" 6,709 86
19	" 11,122 29	" 972 95	" 1,595 81	" 2,736 08	" 5,787 65	" 3,723 86	" 3,709 86	" 6,709 86
20	" 12,274 36	" 5,192 73	10,631 88	" 2,652 08	" 4,474 11	" 4,056 73	" 550 06	" 4,492 28

	State Nat'l bank, New Orleans, La.	Whitney Nat'l b'k, New Orleans, La.	Pomeroy Nat'l bank, Pomeroy, O.	Union Nat'l bank, Richmond, Ind.
9	Cr. 9,433 11	Cr. 4,677 82	Cr. 2,332 37	Dr. 311 57
10	Dr. 614 45	" 4,677 82	" 2,337 60	" 967 70
11	Cr. 10,809 85	" 4,777 82	" 2,270 81	" 408 98
12	" 10,809 85	" 4,677 82	" 2,270 81	" 408 98
13	" 10,987 66	" 6,184 86	" 2,192 54	Cr. 2,454 12
14	" 11,115 27	" 6,443 08	" 1,958 51	" 2,163 30
15	" 13,226 87	" 6,252 63	" 416 61	" 2,350 68
16	" 12,468	" 6,667 91	" 3,091 56	" 2,056 91
17	" 20,526 23	" 6,667 91	Dr. 158 26	" 2,012 68
18	" 21,704 65	" 6,667 91	" 255 10	" 2,012 20
19	" 21,704 65	" 6,667 91	" 255 10	" 2,012 20
20	" 17,826 72	" 5,541 51	Cr. 893 26	" 1,231 26

Date credited by the Fidelity—date received by Fidelity from Commercial.	Names.	Bank to whom sent by Fidelity.	Amount.	Dated credited by the correspondent of the Fidelity.	On indebtedness due the correspondents.	Increasing the indebtedness due Fidelity.
June 9	Connersville, Ind.	Citizens' bank, Connersville	8 08	Cash rem. 6, 13.		
"	Memphis, Tenn.	B'k of Com., Memphis, Tenn.	9 90	June 11, '87	9 90	
"	New Orleans, La.	State Nat'l b'k, New Orleans	31 20	June 11, '87	31 20	
"	Augusta, Ky.	Allen, Harbeson & Co., Augusta, Ky.	97 25	June 10, '87	97 25	
"	Knoxville, Tenn.	Mechanics' Nat., Knoxville, Tenn.	25 68	June 10, '87	25 68	
"	Oshkosh, Wis.	Metro. Nat. b'k, Chicago, Ill.	21 06	June 10, '87	21 06	
"	Iowa City	Am. " " Kansas City	481 29	June 11, '87		481 92
10	Bristol, Tenn.	Mechanics' " " Knoxville, Tenn.	25	June 11, '87	25	
"	Milwaukee, Wis.	1st " " Milwaukee, Wis.	40 63	June 11, '87	40 63	
"	San Antonio, Texas	5th " " St. Louis, Mo.	496 97	June 11, '87		
"	Council Bluffs, Iowa	Metro. " " Chicago, Ill.	499 54	June 11, '87	499 54	
"	Helena, Montana (returned)*	" " " " "	40 44	Returned.		
"	Grafton, W. Va. (returned)*	U. S. " " " "	765 23	Returned.		
"	Schuyler	" " " " "	500	June 11, '87	500 00	
"	Staunton	" " " " "	768 90	June 11, '87	768 90	
"	Bristol, Tenn.	Mechanics' " " Knoxville, Tenn.	341 61	June 11, '87	341 61	
11	Detroit, Mich.	Citizens' sav. b'k, Detroit	200	June 13, '87	200	
"	Wabash, Ind.	Decatur Nat'l " Decatur, Ind.	72 86	June 13, '87	72 86	
"	Cattletsburg, Ky.	Cattlettsburg " " Cattlettsburg, Ky.	26 26	Cash rem. 6, 4.		
"	Omaha, Neb.	American " " Kansas City	59	June 13, '87		59
"	" "	" " " " "	10	June 13, '87		10
"	Indianapolis, Ind.	Fletcher b'k, Indianapolis	71 17	June 13, '87	71 17	
"	" "	Ind'p. Nat. " "	253	June 13, '87	253	

"	Bay City, Mich.	Euclide Ave.	"	"	Cleveland, O.	124 14	June 13, '87	124 14		
13	Indianapolis, Ind.	Ind'p'l's,	Nat'l	"	Indianapolis, Ind.	135 23	June 14, '87	135 23		
"	Lexington, Mo. (returned)*	5th	"	"	St. Louis, Mo.	2 56	Returned.			
"	Indianapolis, Ind.	Fletcher's	"	"	Ind'p'l's, Ind.	56 73	June 14, '87	56 73		
"	Omaha, Neb.	Am.	"	"	Kansas City, Mo.	643 70	June 15, '87		643 70	
"	Kokomo, Ind.	Kokomo	"	"	Kokomo, Ind.	6 30	Cash rem. 6, 16.			
"	St. Paul, Minn.	Metro.	"	"	Chicago, Ills.	10	June 14, '87	10		
"	Owasso, Mich.	Com'l	"	"	Detroit, Mich.	125 55	June 14, '87	125 55		
"	East Saginaw	Preston	"	"	" "	236 22	June 14, '87	(?) 236 22		
"	Springfield, Mo.	5th	"	"	St. Louis, Mo.	40	June 14, '87		40	
"	Denver, Col.	Metro.	"	"	Chicago, Ills.	100	June 14, '87	100		
"	Iowa City, Iowa	"	"	"	" "	85 74	June 14, '87	85 74		
"	Mexica, Texas	5th	"	"	St. Louis, Mo.	298 26	June 14, '87		298 26	
15	Knoxville, Tenn.	East. Tenn.	"	"	Knoxville, Tenn.	133 64	June 17, '87	133 64		
"	Nashville, "	1st	Nat.	"	Nashville, "	77 95	June 16, '87		77 95	
"	Topeka, Kansas	Am.	"	"	Kansas City, Mo.	15 55	June 17, '87		15 55	
"	Grand Rapids, Mich.	Old	"	"	G. Rapids	15 25	June 16, '87	15 25		
"	Lansing, "	Com'l	"	"	Detroit	72 20	June 16, '87	72 20		
"	Milwaukee, Wis.	Wes. F. & M.	"	"	Milwaukee, Wis.	17 81	June 17, '87	17 81		
"	Indianapolis, Ind.	Fletcher's	"	"	Ind'p'l's, Ind.	17 10	June 16, '87		17 10	
"	——, Tennessee	Mech.	"	"	Knoxville, Tenn.	100 05	June 17, '87	100 05		
"	——, "	"	"	"	" "	24 37	June 17, '87	24 37		
"	——, "	East Tenn.	"	"	" "	35	June 17, '87	35		
"	——, " Cash rem. 6, 20	Mercantile	"	"	Memphis, "	31 79	Cash rem. 6, 20.			
"	——, "	First	"	"	Nashville, "	50 41	June 16, '87		50 41	
"	——, " Cash rem. 6, 20	Mercantile	"	"	Memphis, "	300	Cash rem. 6, 20.			
"	——, "	Mechanics'	"	"	Knoxville, "	30 17	June 17, '87	30 17		
						[In pencil:]		4,259 90	2,190 23	

* Words enclosed in parentheses in red ink in copy.

Date credited by Fidelity—date rec'd by Fidelity from Com'l. Phil.		Names.	Bank to whom sent.
June	15	——, Michigan	4th Nat'l b'k, Grand Rapids
	"	——, "	Mer. & M'f'rs' " Detroit, Mich.
	"	——, Minnesota	Metro. Nat. " Chicago
	"	——, Iowa	Don't know to whom sent
	"	——, Kansas	Am. Nat., Kansas City
	"	——, Nebraska	Metro. " Chicago, Ills.
	"	Richmond, Ind.	Union " Richmond, Ind.
	"	Nashville, Tenn.	1st " Nashville, Tenn.
	"	Lincoln, Neb.	German " Lincoln, Neb.
	"	Dubuque, Iowa	Metro. " Chicago, Ills.
	16	Grand Rapids, Mich.	Old " G. Rapids
	"	Carthage, Mo.	5th " St. Louis, Mo.
	"	Columbia, Tenn.	1st " Nashville, Tenn.
	"	Cin'ti, check on Fidelity	Chg. to % of C. E. Potts & Co. June 16.
	"	Chattanooga, Tenn.	City sav. b'k, Chattanooga, Tenn.
	"	Kansas City, Mo.	Am. " " Kansas City, Mo.
	"	New Orleans, La.	State " " New Orleans, La.
	"	Minneapolis, Minn.	Wis. Fire & M. b'k, Milwaukee
	"	Covington, Ky.	Far. & Traders', Covington, Ky.
	"	Fort Worth, Texas	5th Nat. b'k, St. Louis, Mo.
	"	Grand Rapids, Mich.	Old " " Gr. Rapids, Mch.
	17	Axtell, Neb.	Am. " " Kan. City, Neb.
	"	Minneapolis, Minn.	Wis. F. & M. b'k, Milwaukee, Wis.
	18	Lewisburg, Tenn.	1st Nat. b'k, Nashville
	"	Check	No record
	"	Bay City, Mich.	Euclide Ave. Nat., Clev., O.
	"	Carlisle, Kentucky	Far. & Tra., Covington, Ky.
	"	Milwaukee, Wis.	Milwaukee Nat., Milwaukee
	20	St. Paul, Minn.	Metro., Chicago
	"	Indianapolis, Ind.	Fletcher's b'k, Ind'p'l's
	"	Sterling	1st Nat., Kansas City
	"	Minneapolis, Minn.	Wis. Fire & Marine, Milwaukee
	"	Texarkana	5th Nat., St. Louis
	"	Huntington, Ind.	1st " Huntington, Ind.
	"	Detroit, Mich.	Detroit " Detroit, Mich.
	"	St. Paul, Minn.	Metro. " Chicago, Ills.
	"	Memphis, Tenn.	B'k of Commerce, Memphis
	"	Bay City, Mich.	Euclide Ave., Cleveland
	"	New Orleans, La.	Whitney, N. O., La.
	"	Burlington, Ks. (returned)*	Metro. Nat., Chicago
	"	Atchison, "	" " "
	"	M. Vernon	Jennings Co. b'k for rem.
	"	Milwaukee, Wis.	Milwaukee Nat., Milwaukee
	"	Kansas City, Mo.	1st Nat'l b'k, Kansas City
	"	Newport, Ky.	" " " Newport, Ky.

* Word enclosed in parentheses in red ink in copy.

Amount.	Date credited by the correspondent of the Fidelity.	On indebtedness due the correspondent.	Increasing indebtedness due the Fidelity.	Increasing indebtedness due the Fidelity.
38 54	June 16, '87		38 54	
364 30	June 17, '87	364 50		18 75
55 29	June 16, '87	55 29		22 75
32 43				28
599 34	June 17, '87		589 34	86 06
236 85	June 16, '87	236 85		155 10
113 80	June 16, '87	113 80		279 30
37 95	June 16, '87			16 20
132 81	June 17, '87	132 81		56 25
741 12	June 16, '87	741 12		372 46
84	June 17, '87	84		459 96
5 10	June 17, '87		5 10	103 35
37 55	June 17, '87		37 55	173 08
180 29	Paid 6. 16, '87			33 25
131 17	June 17, '87	131 17		
82 80	June 18, '87		82 80	
148 97	June 18, '87	148 97		
21	June 18, '87	21		
120	June 17, '87	120		
255	June 17, '87		255	
990	June 18, '87	990		
32 50	June 18, '87		32 50	
100	June 20, '87	100		
64 18	June 20, '87		64 18	
1 50				
161 12	June 20, '87	161 12		
15 25	June 20, '87	15 25		
1,012 96	June 20, '87		1,012 96	
45	June 21, '87		45	
33 98	June 21, '87		33 98	
180 80	June 22, '87		180 80	
86 21	June 22, '87	86 21		
130 81	June 21, '87		130 81	
48 45	June 21, '87	48 45		
44 83	June 21, '87	44 83		
149 50	June 21, '87		149 50	
13 13	June 21, '87	13 13		
7 80	June 21, '87	7 80		
26	June 22, '87	26		
150	Returned.			
1,000	June 21, '87		1,000	
49 31				
297 15	June 22, '87		297 15	
177 16	June 22, '87		177 16	
7 30	June 21, '87		7 30	

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Date rec'd.	Name.	B'k to whom sent by Fidelity.	Amount.	Date credited to the Commercial Nat., Phil., by the Fidelity.	Date credited by the corres. of the Fidelity.	On indebtedness due the correspondent.
June 4, '87	Lindsey	Louis. B'k'g Co., Louisville, Ky.	141 60	June 14, '87	June 12, '87	141 60
13, "	Rors	" " "	18 75	" 18, "	" 16, "	
" "	Leavenworth, Kas.	Am. Nat., Kansas City	22 75	" 23, "	" 18, "	
" "	" " "	" "	28	" 23, "	" " "	
" "	Rock Island, Ills.	Metro. Nat., Chicago	86 06	" 23, "	" " "	
4, "	Louisville, Ky.	Louis. B'k'g Co.	155 10	" 23, "	" " "	
" "	Wahensley	5th Nat'l, St. Louis	279 30	" 23, "	" 20, "	
12, "	Marshall, Texas	" "	16 20	" 23, "	" " "	
" "	Houston, "	" "	56 25	" 23, "	" " "	
4, "	Kansas City, Mo.	Am. " Kansas City	372 46	" 23, "	" " "	
10, "	Deitz, Louisville	Louisv. B'k'g Co., Louisv., Ky.	459 96	July 8, "	" " "	
" "	Omaha, Neb.	Am. Nat., Kansas City	103 35	June 23, "	" 21, "	
13, "	Clinton, Ia.	Metro. " Chicago, Ills.	173 08	July 5, "	" 22, "	
10, "	Road House, Ills.	" " " "	33 25	June 23, "	" " "	

264 And afterwards, to wit, on the 27th day of May, A. D. 1889, the following amended report of special master was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Amended Report of Special Master.

The United States Circuit Court, Southern District of Ohio, Western Division.

THE COMMERCIAL BANK OF PENNSYLVANIA
vs.
DAVID ARMSTRONG, Receiver of the Fidelity National Bank. } No. 4087.

Amended report of special master.

To the judges of the United States circuit court for the southern district of Ohio:

The undersigned, appointed special master under decree entered in the above-stated case March 9, 1889, respectfully submits the following report:

By decree the master was directed to report:

First. What amount, if any, of the proceeds of the notes, drafts, and other commercial paper received from complainant by the Fidelity National bank, "endorsed for collection for complainant," between June 4 and June 20, 1887, was paid to the receiver of said Fidelity bank after the failure thereof, setting out particularly what items and what amount thereof.

265 Second. What amount, if any, of the proceeds of such paper was remitted to and received by the Fideoity National bank between said dates, and what amount thereof is tra-eable to David Armstrong, receiver, setting out what items and the amount thereof.

Third. What amount, if any, of the proceeds of such paper was collected by correspondents of the Fidelity National bank and credited, with the assent of the Fidelity National bank or the receiver thereof, by them on indebtedness due them from said Fidelity bank.

Fourth. What amount of cash was on hand in said Fidelity Nat. bank at the time of its failure and how much cash was taken in and paid out during said period, from June 4 to June 20, from any and all sources.

May 7, 1889, the master filed his report, and May 25 the master was directed by your honors to so amend his report as to show what portion of the proceeds of said commercial paper transmitted by complainant to the Fidelity National bank between June 4 to June 20, inclusive, as aforesaid, was collected by correspondents of said Fidelity bank, credited to said Fidelity bank by said correspondents upon balances due said Fidelity bank from said correspondents, and where the accounts between said Fidelity bank and said correspondents exhibited a continuous balance due said Fidelity bank down to the date of the failure thereof as large or larger than the amount

of the proceeds of complainant's said commercial paper so collected and credited by said correspondents respectively to said Fidelity bank, and where such balances so due at the time of the failure of the said Fidelity bank were subsequently paid to defendant.

266 *Statement.*

The complainant sent to the Fidelity National bank, "endorsed for collection for complainants," between June 4 and June 20, 1887, inclusive, notes, drafts, and other commercial paper amounting to		$17,810 15
Of this there was returned uncollected		958 23
Leaving to be accounted for as collected		$16,851 92
Of that amount the sight or cash items were	$14,905 81	
And the time items were	1,946 11	
		$16,851 92

The said sight or cash items were conditionally credited to the account of the complainant by the Fidelity National bank at the date of their receipt from complainant by the Fidelity bank, and the time paper was credited to complainant by the Fidelity bank or its receiver from time to time as it was collected or as its collection was advised by correspondents of said Fidelity bank.

The sight or cash items were thus credited to the account of the complainant by the said Fidelity bank at the date of their receipt by said Fidelity bank and sent to and charged to the accounts of the correspondents of said Fidelity bank and otherwise disposed of as follows:

See Schedule "A." Charged to correspondents on credit balances	$7,592 92
See Schedule "B." Charged to correspondents on debit balances	6,676 93
Paid by remittances in cash	552 70
Items in dispute of which defendant has no record	33 93
Mt. Vernon items, paid to receiver	49 33
Items returned uncollected	958 23
Total of sight or cash items	$15,864 04

267 But some of the debit balances of said correspondents above stated were, subsequent to the charges referred to, charged to credit balances by reason of reciprocal transactions of business prior to the failure of the Fidelity bank. By said changes of debit balances to credit balances $89.96 of the above stated $6,676.93 as having been charged to said debit balances was wiped out, so to speak, and on the basis of said changes the following statement exhibits the true condition of said collections in respect of debit and credit balances as said balances stood at the time of the failure of the Fidelity bank:

"Schedule C."	Charged to correspondents on credit balances existing at the date said charges were made	7,592 92	
	Charged to correspondents on debit balances existing at date said charges were made, but which subsequently became credit balances	89 96	7,682 88
	Charged to correspondents on debit balances	6,676 93	
	Charged to correspondents on debit balances existing at date said charges were made, but which subsequently became credit balances	89 96	6,586 97
			$14,269 85

The "time" items of said commercial paper were disposed of as follows:

"Schedule D."	Charged to correspondents on debit balances	1,804 51	
	Charged to correspondents on credit balances	141 69	1,946 11
268 Schedule "E."	Paid by remittances in cash		692 03
" "F."	Items in dispute		33 92
			$16,851 92

The several balances due to the Fidelity bank at the date of its failure from correspondents through which said collections were made have been adjusted and paid to defendant by the said correspondents respectively, excepting the balances due from the 5th National Bank of St. Louis ($1,577.89), which has not been paid, because that bank is in the hands of a receiver — in process of liquidation.

269 *Findings.*

First. That of the proceeds of the notes, drafts, and other commercial paper received from complainants by the Fidelity National bank, "endorsed for collection for complainant," between June 4 and June 20, 1887, the following was paid to the receiver of said Fidelity bank after the failure thereof, to wit:

Item "Mt. Vernon"	June 22	$49 31

Second. Of the proceeds of such paper remitted to and received by the Fidelity National bank between said dates the following amounts are traceable to David Armstrong, receiver, to wit:

Mt. Vernon	June 22	49 31
Connersville	" 13	8 08
Cattlettsburg	" 14	26 26
Kokomo	" 16	6 30
C. E. Potts, local	" 16	180 29

Memphis	June 20	31	79
"	" 20	300	00
Proceeds of commercial paper as per Schedule "G"		6,607	56
		$7,209	59

Said Schedule "G" is a statement showing the amounts of said commercial paper of complainant collected by correspondents of the Fidelity bank, who were debtors of said Fidelity bank, and
270 by them credited to said Fidelity bank, thus increasing said indebtedness to the Fidelity, and where said indebtedness was at the date of said collections respectively and from that time until the failure of the Fidelity sufficient to pay the amount of said commercial paper. In respect of the balance of $236.22 due from the Preston Bank of Detroit from the proceeds of said collections, however, it appears that on June 20 the balance due the Fidelity from said Preston bank on the general account was reduced to $30.19, and the master has therefore assumed that only the last-named amount is traceable to Receiver Armstrong.

Of the proceeds of said commercial paper it appears that $1,785.76 of the time paper was charged on debit balances by said receiver after the failure of the Fidelity bank, but of this amount $1,476.08 had been collected by correspondents and credited to the Fidelity by such correspondents prior to said failure, leaving $309.68 as the amount actually collected by correspondents, credited by said correspondents to the account of the Fidelity bank, and charged to said correspondents respectively by said receiver, and is thus traced to said David Armstrong, receiver.

Third. Of the proceeds of such paper there was collected by correspondents of the Fidelity and credited with the assent of said Fidelity or its receiver on indebtedness due said correspondents from said Fidelity bank:

Of sight or cash paper	7,592	92
Of the time paper (Lindsay, Ky.)	141	60
Total	$7,734	52

271 Fourth. The cash on hand in the Fidelity bank at the time of its failure was $110,230.03. It is impossible to ascertain the amount of cash paid out and taken in during the period between June 4 and June 20, 1887, as the word "cash" seems to have had a very flexible and comprehensive signification with the managers of the Fidelity bank, and was made to embrace an average of nearly one million of dollars of trash that was utterly worthless, but which figured as that much cash in the alleged assets of the bank during the period embraced in this inquiry.

The accompanying schedules embrace the items which go to make up the several amounts stated in this report.

All of which is respectfully submitted.

B. R. COWEN,
Special Master.

Cincinnati, Ohio, May 27, 1889.

272 (A.)

Schedule of "Sight" or Cash Items Charged to Correspondents on Credit Balances.

June	9.	Memphis	9 90
		N. Orleans	31 20
		Augusta	97 25
		Knoxville	25 68
		Oshkosh	21 06
	10.	Bristol	25
		Milwaukee	40 63
		Council Bluffs	499 54
		Schuyler	500
		Staunton	768 90
		Bristol	341 61
	11.	Detroit	200
		Indianapolis	71 17
		Do.	253
		Bay City	124 14
	13.	Indianapolis	135 23
		Do.	56 73
		St. Paul	10
		Owasso	125 55
		Denver	100
		Iowa City	85 74
		Knoxville	133 64
		Grand Rapids	15 25
		Lansing	72 20
		Milwaukee	17 81
		Tennessee	100 05
		"	24 37
		"	35
		"	30 17
		Michigan	364 30
		Minn.	55 29
		Neb.	236 85
		Richmond	113 80
		Lincoln	132 81
		Dubuque	741 12
	16.	Grand Rapids	84
		Chattanooga	131 17
		N. O.	148 97
		Minneapolis	21
		Covington	120
	17.	Grand Rapids	990
			7,090 13

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		Bro't for'd	7,090 13
June	17.	Minneapolis	100
	18.	Bay City	161 12

June	18.	Carlisle	15 25	
	20.	Minneapolis	86 21	
		Huntington	48 45	
		Detroit	44 83	
		Memphis	13 13	
		Bay City	7 80	
		N. O.	26	
				7,592 92

274 "B."

Schedule of Sight or Cash Items Charged to Correspondents on Debit Balances.

June	9.	Iowa City	481 29	
	10.	San Antonio	496 97	
	11.	Wabash	72 86	
		Omaha	59	
		"	10	
	13.	"	643 70	
		E. Saginaw	236 22	
		Springfield	40	
		Mexica	298 26	
	15.	Nashville	77 95	
		Topeka	15 55	
		Indianapolis	17 10	
		Tenn.	50 41	
		Mich.	38 54	
		Kansas	539 34	
		Nashville	37 95	
	16.	Carthage	5 10	
		Columbia	37 55	
		Kansas City	82 80	
		Fort Worth	255	
	17.	Axtell	32 50	
	18.	Lewisburg	64 18	
		Milwaukee	1,012 96	
	20.	St. Paul	45	
		Indianapolis	33 98	
		Sterling	180 80	
		Texarkana	130 81	
		St. Paul	149 50	
		Atchison	1,000	
		Milwaukee	297 15	
		Kansas City	177 16	
		Newport, Ky.	7 30	
				6,676 93

SCHEDULE "C."

Charged to Correspondents on Debit Balances Existing at the Dates said Charges Were Made, but Which Subsequently Became Credit Balances.

June 11.	Wabash	72 86	
15.	Indianapolis	17 10	
			89 96

275 "D."

Time Paper Charged to Correspondents on Debit Balances.

June 18.	Rors	18 75	
23.	Leavenworth	22 75	
"	"	28	
"	Rock Island	86 06	
"	Louisville	155 10	
"	Wahenley	279 30	
"	Marshall	16 20	
	Houston	56 25	
	Kansas City	372 46	
July 8.	Louisville	459 96	
June 23.	Omaha	103 35	
July 5.	Clinton	173 08	
June 23.	Road House, Ill.	33 25	
			$1,804 51

"E" SCHEDULE.

June 13.	Connersville	8 08	
14.	Cattlettsburg	26 26	
16.	Kokomo	6 30	
"	C. E. Potts, local	180 29	
20.	Memphis	31 79	
"	"	300	
22.	Mt. Vernon	49 31	
			602 03

"F" SCHEDULE.

June 15.	Iowa. No record to whom sent	32 43	
18.	Check. " " "	1 50	
			33 93

G.

Account of American Nat'l B'k of Kansas City.

Date of credit of correspondents.		Items of comp's paper.		Complainant's daily bal. with corresp'd'ts.	Total dis. to cor's by Fidelity.	Total credits to cor's by Fidelity.	Daily balances, all Dr.
June	11	Iowa City	481 29	481 29	1,279 83	2,283 61	13,351 81
	12			481 29			
	13	Omaha	59		4,204 66	1,119 86	16,436 61
	"	"	10	550 29			
	14				4,399 45	2 65	20,833 41
	15	Omaha	643 70	1,193 99	1,547 50	552 13	21,828 78
	16			1,193 99	4,315 42	12,704	14,440 10
	17	Topeka	15 55		2,671 72		
	"	Kansas	589 34	1,798 88		25	17,086 82
	18	Kansas City	82 80				
	"	Axtell, Neb.	32 50				
(Time.)	"	Leavenworth	22 75				
"	"	"	28	1,964 93	3,915 94	963 15	20,039 61
"	19						
"	20	Kansas City	372 46	2,337 39	12,428 36	7,297 24	25,170 73
"	21	Omaha	103 35	2,440 74			

Account 5th Nat'l Bank of St. Louis.

June	11	San Antonio	496 97	496 97	8,754 11	40,649 14	38,108 67
	13			496 97	14,431 61	25,936 25	26,604 03
	14	Springfield	40				
	"	Mexica	298 26	835 23	13,452 29	7,010 81	33,045 51
	15	"		835 23	9,534 87	25,994 88	16,585 50

	16	"		835 23	18,190 79	391 63	34,384 66
	17	Carthage	5 10				
	"	Ft. Worth	255	1,095 35	3,464 22	1,525 27	36,323 61
	18			1,095 35	12,720 55	21,430 86	27,613 30
(Time.)	20	Wahensey	279 30				
	"	Marshall	16 20				
	"	Houston	56 25	1,447 08	12,197 92	6,623 37	33,177 95
	21	Texarkana	130 81	1,577 89			

277 *Account of First National Bank of Nashville.*

June	16	Nashville	77 95	77 95			
	"	Tenn.	50 41				
	"	Nashville	37 95	166 31	4,769 76	4,000	16,395 89
	17	Columbia	37 55	203 86	1,382 32		17,778 26
	18				1,216 09	10,000	8,994 34
	20	Lewisburg	64 18	268 04	9,572 07	12,729 80	6,776 62

Account of Metropolitan Nat'l Bank of Chicago.

June	18	Rock Island (time)	86 06	86 06	10,752 40	4,046 02	4,862 46
	20			86 06	45,360 37	8,429 91	41,792 92
	21	St. Paul	45				
	"	"	149 50				
	"	Atchison	1,000	1,280 56			
(Time.)	22	Road House	33 25				
	"	Clinton	173 08	1,486 89			

Account of Fourth Nat'l Bank of Grand Rapids.

June	16	Michigan	38 54	38 54	936 42	171 50	1,684 08
	17			38 54	238		1,922 08
	18			38 54	185 63		2,107 71
	20			38 54	273 07	601 01	1,779 67

Account of Milwaukee National Bank.

Date of credit of correspondents.		Items of comp's paper.		Complainant's daily bal. with corresp'd'ts.	Total dis. to cor's by Fidelity.	Total credits to cor's by Fidelity.	Daily balances, all Dr.
June	20	Milwaukee	1,012 96	1,012 96	1,600 83	2,169 48	1,333 16
	22	"	297 15	1,310 11			

Account of Fletcher's Bank, Indianapolis.

June	21	Indianapolis	33 98	33 98			

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Account of First National B'k of Kansas City.

June	22	Sterling	180 80	180 80			
	"	Kansas City	177 16	357 96			

Account Louisville Banking Co.

June	16	Rors (time)	18 75	18 75	1,583 47	1,840 95	4,346 96
	17			18 75	532 44	3,781 15	1,098 15
	18	Louisville (time)	155 10	173 85	2,160 41	1,662 75	1,595 81
	20	" "	459 96	633 81	12,196 26	3,160 19	10,631 88

Account of First Nat'l Bank of Newport, Ky.

June	21	Newport	7 30	7 30			

Account of Preston Bank of Detroit, Michigan.

June	14	East Saginaw		236 22	236 22	267 30	408 28	248 94
	15							248 94
	16							248 94
	17						3 50	252 44
	18							252 44
	20					1 52	223 77	30 19

279 *Recapitulation.*

American Nat'l bank, Kansas City	2,440 74	
Fifth Nat'l b'k, St. Louis	1,577 89	
First Nat'l b'k, Nashville	268 04	
Metropolitan Nat'l bank, Chicago	1,486 89	
Fourth Nat'l b'k, Grand Rapids	38 54	
Milwaukee Nat'l bank	1,310 11	
Fletcher's bank, Indianapolis	33 98	
First Nat'l, Kansas City	357 98	
Louisville Banking Co.	633 81	
First National, Newport, Ky.	7 30	
Preston bank, Detroit	236 22	
		8,391 48
Of which—		
The sight paper was	6,586 87	
The time " "	1,804 61	
		8,391 48
And of which there was cr. before failure by correspondent	5,879 30	
And there was cr. after failure	2,512 18	
		8,391 48
(Out.)		
Of the amount thus cr. by correspondents after failure there was of sight paper	2,202 50	
And of time paper	309 68	
		2,512 18
Total amount so collected		8,391 48
Amount due from 5th Nat. b'k, St. Louis	1,577 89	
Difference between amount due from Preston bank as above stated and the balance due from said bank to Fidelity at the date of the failure	206 03	
		1,783 92
Amount thus traced into hands of def't		6,607 56

279½ SCHEDULE "H."

Time Paper Charged on Debit Balances by Receiver After Failure of Fidelity.

June 13. Leavenworth	22 75	
" "	28	
" Rock Island	86 06	
" Louisville	155 10	
" Wahemsley	279 30	
" Marshall, Texas	16 20	
" Houston	56 25	

June 4.	Kansas City	372 46	
10.	Dietz, Louisville	459 96	
"	Omaha	103 35	
13.	Clinton, Ia.	173 08	
10.	Road House, Ill.	33 25	
			1,785 76

280 And afterwards, to wit, on the 28th day of May, A. D. 1889, the following exception was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Circuit Court of the United States, S. D. O., West. Div.

THE COMMERCIAL NATIONAL B'NK OF PENN., Complainant, *vs.* DAVID ARMSTRONG, Receiver Fidelity Nat. B'k of Cincinnati, Defendant. } No. 4087.

Exceptions of Respondent to the Amended Report of Special Master, B. R. Cowen, Esq.

The respondent, not waiving any of the insufficiencies of the report and amended report of the special master hereinbefore filed, doth except to said amended report, and assigns for grounds of exception the following, to wit:

1st. The said amended report purports to find as follows:

"The said sight or cash items were conditionally credited to the account of the complainant by the Fidelity bank." Respondent excepts — the same, because, by the terms of the order appointing the master, dated M'ch 9, 1889, the matter or issues as to the manner in which such cash items were credited was not submitted or referred to the master; therefore respondent offered no evidence before the master as to how or in what manner the said credits of cash items were made, and consequently respondent says the master, in and by the said language of his amended report, has gone beyond the matter referred to him; for which cause respondent excepts.

2. The respondent excepts because the amended report fails to state or show the fact, as it was disclosed by the uncontra-
281 dicted evidence before the master, namely, that the dates in the column on the left hand of Schedule- A, B, C, & D, E, and F are the dates of the credit by the Fidelity bank on its books to the complainant and of the charge by the Fidelity bank on its books to the correspondent to whom the paper was sent, respectively; and respondent excepts to the said schedules accordingly and asks that the master be required to amend his amended report by stating the facts as to said dates as above.

3. The respondent excepts to the amended report because it omits and fails to state a certain finding contained in the report filed originally in this cause as follows: "Of the proceeds of said com-

mercial paper it appears that $1,785.81 of the time paper was charged on debit balances by the receiver after the failure of the Fidelity bank, but of this amount $1,576.12 had been collected by correspondents and credited to the Fidelity by such correspondents prior to said failure, leaving $209.86 as the amount actually collected by correspondents credited by said correspondents to the account of Fidelity bank and charged to said correspondents respectively by said receiver," the same having been omitted by the master without any order or direction of this court, and respondent excepts to this omission and asks that the said language be made part of or considered as part of the amended report herein.

4th. Respondent excepts to the amended report, or so much as is contained in Schedule "G," in that it fails to state what appears by the books of the Fidelity bank, which were before the master in evidence, that the daily balances constituting the debit balances with correspondents named in said Schedule "G" were made up,
282 besides the items of complainant, of items of paper transmitted by other correspondents of the Fidelity bank to the Fidelity bank under the same character of indorsement as the paper in this case of respondent's.

5. And respondent excepts to the finding of the master that the proceeds of paper in Schedule "G" are traceable to David Armstrong, receiver, because the same is a conclusion of law and not proper to be made by the master, or if it be a conclusion of fact (or of law) the same is not sustained or supported by the findings in the said amended report.

Wherefore said respondent doth except and doth pray that these exceptions be allowed and sustained, and that the court may recommit the report to the master or reform the same, as it may be most expedient.

JOSEPH WILBY,
For Respondent.

And afterwards, to wit, on the 8th day of June, A. D. 1889, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Journal Y, p. 350.

This cause came on at this term to be further heard and, being argued by counsel and submitted to the court, upon consideration thereof it is ordered, adjudged, and decreed as follows—that is to say: That the court do find the equity in this case in favor of the complainant, and that the complainant in consequence thereof is entitled to be paid by the respondent the funds, the proceeds
283 of commercial paper remitted to and received by the Fidelity National bank, endorsed by the complainant "for collection account of" complainant, which now are or may be hereafter traceable into the hands of the respondent, as receiver, as hereinafter set out, and that out of the funds in his hands as receiver as aforesaid respondent do pay to the complainant the sum of $7,209.59, being the sum of the proceeds of commercial paper remitted to

and received by the Fidelity National bank, endorsed by the complainant "for collection account of" complainant, traceable into the hands of said David Armstrong, receiver, as ascertained by the reports of the special master heretofore appointed herein, and that the respondent pay over to the complainant any and all sums he may have received or may hereafter receive from the receiver of the 5th National Bank of St. Louis, Mo., as dividends upon the sum of $1,577.89, which said sum of $1,577.89 is the amount of certain commercial paper as aforesaid remitted by the complainant to the Fidelity National bank, endorsed by complainant to the order of the Fidelity National bank "for collection account of" complainant, which said paper was by said Fidelity National bank in like manner remitted to the said 5th National Bank of St. Louis, and which said dividends will be traceable to the hands of said David Armstrong, receiver, as the proceeds of said commercial paper.

And the court being of opinion that as to the balance of the commercial paper remitted by the complainant to and received by the Fidelity National bank endorsed by the complainant to the order of the Fidelity Nat. bank "for collection account of" complainant, which said balance amounts to the sum of $8,063.44, the proceeds thereof are not traceable into the hands of the respondent as received, but that the same were applied by the various banks and agencies collecting the same to the payment of
284 debts due to them from the Fidelity National bank, it is ordered that as to said sums the complainant take nothing by its bill, and that each party pay half of the costs herein, including the fee of the special master herein, which fee is fixed by the court in the sum of one hundred and twenty-five dollars.

And thereupon came the complainants and in open court prayed an appeal from this decree, which appeal is accordingly allowed and the bond for said appeal fixed in the sum of $1,000.

And likewise came the respondent and in open court prayed an appeal from this decree, which appeal is accordingly allowed; and the court, being satisfied that said appeal by the receiver of the Fidelity National bank is taken by order of the Comptroller of the Currency of the United States, doth order that no bond for said appeal, either for supersedeas or costs, be required of respondent herein.

285 And afterwards, to wit, on the 1st day of July, A. D. 1889, the following appeal bond was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Appeal Bond.

Circuit Court of the United States, Southern District of Ohio, Western Division, *ss:*

THE COMMERCIAL NATIONAL BANK OF PENN.
vs.
DAVID ARMSTRONG, Receiver Fidelity Nat'l Bank of Cincinnati, O.

Know all men by these presents that we, The Commercial Na-

tional Bank of Penn., at Philadelphia, as principal, and Marion S. Bloom and Louis Bettman, sureties, are held and firmly bound unto David Armstrong, as receiver of the Fidelity National bank, Cincinnati, O., in the sum of one thousand dollars, to be paid to the said David Armstrong, receiver, &c., his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this 18th day of June, 1889.

Whereas the above-named The Commercial National Bank of Pennsylvania has prayed an appeal to the Supreme Court of the United States of America to reverse the decree, in so far as it is adverse to complainant, rendered in the above-entitled action by the circuit court of the United States for the southern district of Ohio:

Now, therefore, the condition of this obligation is such that if the above-named The Commercial National Bank of Penn.
286 shall prosecute its said appeal to effect and answer all costs if it shall fail to make good its plea, then this obligation to be void; otherwise to remain in full force and virtue.

THE COMMERCIAL NATIONAL BANK OF PENN., [SEAL.]
By HARMON, COLSTON, GOLDSMITH AND HOADLY,
Its Attorneys.
MARION S. BLOOM. [SEAL.]
LOUIS BETTMANN. [SEAL.]

Sealed and delivered in presence of—
A. W. GOLDSMITH.
OSCAR STOCHR.

The above security is approved.

GEO. R. SAGE,
District Judge of the U. S., S. D. Ohio, Sitting and Holding Cir. C't.

SOUTHERN DISTRICT OF OHIO, *ss:*

I, Marion S. Bloom, one of the sureties above named, do solemnly swear that, after paying my just debts and liabilities, I am worth over five thousand dollars in real estate in my own name situate in the county of Hamilton, in said district.

MARION S. BLOOM.

Sworn to before me the 19th day of March, 1889.

A. W. GOLDSMITH,
Notary Public. [SEAL.]

SOUTHERN DISTRICT OF OHIO, *ss:*

I, Louis Bettmann, one of the sureties above named, do solemnly swear that, after paying my just debts and liabilities, I am worth over five thousand dollars in real estate in my own name situate in the county of ——, in said district.

LOUIS BETTEMANN.

287 Sworn to before me the 19th day of March, 1889.

A. W. GOLDSMITH,
Notary Public. [SEAL.]

THE UNITED STATES OF AMERICA, *Southern District of Ohio, Western Division,* } *ss:*

I, Benjamin R. Cowen, clerk of the circuit court of the United States within and for the division and district aforesaid, do hereby certify that the foregoing is a full, true, and complete transcript of the proceedings had by and before said court in the above-entitled cause and as the same appears of record in said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Cincinnati, O., this 15th day of August, A. D. 1889.

Seal of the Circuit Court, South'n Dist. of Ohio.

B. R. COWEN, *Clerk,*
By R. C. GEORGI, *Deputy.*

288 Supreme Court of United States.

THE COMMERCIAL NATIONAL BANK OF PA., Appellant, *vs.* DAVID ARMSTRONG, Receiver of the Fidelity National Bank of Cincinnati, Appellee. } No. 1210, General Docket.

DAVID ARMSTRONG, Receiver of the Fidelity Bank of Cincinnati, Appellant, *vs.* THE COMMERCIAL NATIONAL BANK OF PA., Appellee. } No. 1211, General Docket.

It is hereby stipulated between counsel for appellant and appellee that the opinion of the circuit judge in this case be considered and printed as part of the record of the same.

September 10th, 1889.

JOHN W. HENOR, *For Def't.*
EDWARD COLSTON,
Attorney for Com'l Nat. B'k of Penn.

289 United States Circuit Court, Southern District of Ohio, Western Division.

THE COMMERCIAL NATIONAL BANK OF PENNSYLVANIA, Complainant, *vs.* DAVID ARMSTRONG, Receiver of the Fidelity National Bank, Defendant. } In Equity. #4087.

JACKSON, *Judge:*

The general object and purpose of the bill in this case is the recovery of certain funds which the complainant claims are impressed with a trust character in its favor, and which it is alleged have

come into the possession of the defendant as the receiver of the Fidelity National Bank of Cincinnati. The trust character of the fund claimed is disputed, and that constitutes the real controversy between the parties to the suit.

The material facts of the case, as established by the evidence in which the questions of law arise and the right to the relief sought depends, are the following, viz:

The Fidelity National bank, desiring to open and establish business relations with the complainant, addressed to it under date of February 12th, 1887, the following circular letter and propositions:

290 "Com'l Nat. b'nk, Philadelphia, Pa.

GENTLEMEN: Enclosed herewith we hand you our last statement, showing us to be the second bank in Ohio in deposits in the tenth month of our existence. We should be pleased to serve you, and trust you will find it to your advantage to accept one of the following propositions:

No. 1. We will collect all items at par and allow 2½% interest on daily balances, calculated monthly. We will remit any balance you have above $2,000 in New York draft, as you direct, or ship currency at your cost for expressage.

No. 2. Will collect at par all points west of Pennsylvania and remit the 1st, 11th, and 21st of each month.

No. 3. We will collect at par Ohio, Indiana, and Kentucky items and remit balances every Monday by draft on New York. We do not charge for exchange on propositions No-. 1, 2, and 3.

No. 4. Will collect Cincinnati items and remit daily at 40 cents per thousand, or 20 cents for $500 or less. National banks not in a reserve city can count all they have with us as reserve.

Your early reply will oblige."

To this communication the Commercial Nat'l bank replied on Feb'y 18, 1887, accepting the second of the above propositions. This letter of acceptance was written upon one of the printed letter-heads which complainant was in the habit of using in its general business intercourse with correspondents relating to paper received or transmitted for collection, the printed portions of the letter being in the following form:

291 "Commercial National Bank of Pennsylvania.

PHILADELPHIA, ——, 188–.

To — National bank, —:

Yours of — inst. is received, with enclosures as stated.

Respectfully,

—— ——,

For Cashier."

I enclose for collection— For credit.

Along with this letter of acceptance complainant transmitted certain sight drafts or checks to the amount of $2,007.55, endorsed for collection for Commercial Nat'l bank, which constituted the first dealings or transactions between the two banking associations.

Upon the receipt of complainant's acceptance of its said second proposition the Fidelity National bank caused to be prepared and forwarded to the Commercial Nat'l bank a stamp to be used by it in endorsing paper transmitted for collection under and in pursuance of the contract and agreement then entered into between the two banks. The impression or endorsement made by said stamp was this:

"Pay Fidelity Nat'l Bank of Cincinnati, O., for collection for Commercial Nat'l Bank of Philadelphia.

E. P. GRAHAM, *Cashier.*"

Commencing with its letter of acceptance of said second proposition, complainant continued to forward to the Fidelity Nat'l bank for collection commercial paper, consisting of checks, drafts, and promissory notes, payable in the designated territory, either
292 at sight or on demand or at a certain time after date or after demand, until June 21st, 1887, when the Fidelity Nat'l bank, having become insolvent, was closed by the Comptroller of the Currency and soon thereafter defendant was appointed receiver of its assets and its charter was forfeited. Upon all the paper which complainant transmitted to the Fidelity Nat'l bank for collection under the contract formed by the acceptance of said second proposition there was placed by the use of the stamp furnished by the Fidelity Nat'l bank the above special endorsement: "Pay Fidelity Nat'l Bank of Cincinnati, O., for collection for Commercial Nat'l Bank of Philadelphia. E. P. Graham, cashier."

At the date of its failure and suspension the Fidelity Nat'l Bank had not accounted for paper so endorsed and transmitted by complainant between the 4th and 20th June, 1887, to the amount of $16,000 or $17,000. There is no dispute as to the items making up said amount or as to the fact that each of said items were duly received by said Fidelity bank and have upon each item or piece of paper the special endorsement aforesaid. It was not understood or intended by either the transmitting or the receiving bank that the title to the paper sent forward for collection should pass to or be vested in the Fidelity bank; on the contrary, the agreement and understanding between them contemplated what was expressed by the proposition made and accepted and the endorsement placed on the paper, that the title to all such paper should be and remain in the complainant, who neither opened or intended to open any deposit account with the Fidelity Nat'l bank. Previous to this
293 special arrangement entered into between them they had had no business connection or transactions and kept no accounts with each other.

All the paper forwarded by complainant between the 4th and 20th June, the proceeds of which are involved in this controversy, was transmitted in letters having the printed form of letter-heads as above indicated; and, in conformity with the general usage and course of business between banks occupying towards each other such relation as the contract in question created or sending and receiving commercial paper for collection, a distinction was made

between such paper as was payable at sight or on demand and such as was payable at a certain day after date or after demand. The former were designated as "cash items" and the latter as "time paper."

The course of business between the two banks and the method of keeping their accounts with each other were as follows: When "cash items" were transmitted by complainant to the Fidelity Nat'l bank, including these embraced in the present controversy, they were entered as of the date of their transmission on the foreign cash item book of the former, and from said book such entries were posted into the general account of the Fidelity on complainant's books as of such date, and when such "cash items" were received by the Fidelity Nat'l bank it credited the same on its books to the complainant as of the date received and charged the same to its correspondents to whom such "cash items" were sent by it for actual collection. If such "cash items" were not paid on presentation, the Fidelity Nat'l bank would charge them back to complainant and return them, whereupon complainant would credit the Fidelity
294 bank with the same upon the account which it kept against the latter. When the complainant transmitted "time items" or papers, including that covered by this suit, the same was entered on complainant's foreign collection register as of the date of transmission, and was not entered upon the general account of the Fidelity National bank upon the books of the Commercial National bank until advice was received from said Fidelity bank that such time items had been collected. The Fidelity National bank neither credited or remitted complainants such time items until it had received advice from its correspondents of their payment. The books of the Fidelity Nat'l bank show to whom it sent all the paper, both "cash" and "time items," for collection and when the same was collected by its correspondents, with all or most of whom it had current accounts showing balances in favor of or against said Fidelity bank from day to day and at the time of its suspension.

Up to June 4th, 1887, the Fidelity National bank, in pursuance of and in compliance with its contract and agreement, made remittances with complainant on the 1st, 11th, and 21st of each month of collections made up to the date of each remittance, accompanying the same with a statement of the several collections made and included in such remittance. Such statements designated and identified the separate items of paper which had been collected. Such remittances, together with any and all such cash items as were not paid on presentation, were by the Fidelity bank charged back against the complainant on the books of the former and were credited to the Fidelity on the books of the complainant. Under date of May 25th, 1887, the complainant's cashier, E. P. Graham, wrote the cashier of the Fidelity bank as follows:

295 "DEAR SIR: We do not wish to complain, but would like to understand why your remittances of May 21st only included items sent you up to May 14th and received by you on the

16th. We have to explain these things to our depositors, and wish to act intelligently on the subject.

"Yours, &c., —— ——."

To this communication the Fidelity Nat'l bank, through E. L. Harper, vice-president, returned the following reply:

"GENTLEMEN: We collect at par and include in our remittances everything collected to date."

The complainant made no objection to this construction of its undertaking of the Fidelity Nat'l bank, but acquiesced therein, and continued to transmit paper for collection under the contract as that interpreted, such paper being charged and credited as already stated.

On the foregoing statement of facts three leading questions are presented for consideration and determination:

First. What, under their contract and course of business, was the relation created between the two banks in respect to the commercial paper which complainant sent to the Fidelity bank for collection?

Second. What, if any, change or modification of that relation was made or effected, as of the proceeds of such paper after actual collection thereof, by the Fidelity National bank or its correspondents? and

Third. How far or to what extent can complainant follow and impress upon the proceeds of such paper a trust, such as will entitle it to a recovery out of funds in the hands of the receiver?

296 For the complainant it is insisted that the relation established by the contract and the endorsement placed upon the paper transmitted for collection was only that of principal and agent; that the title to the paper and to the proceeds thereof never passed to the Fidelity National bank, but remained in itself, and that, the Fidelity National bank having, as such agent, collected its paper and failed to account for the proceeds, the amount thereof so received constituted a trust fund which complainant may rightfully follow and recover in full out of the general assets of the Fidelity bank which have or may come into the hands of the defendant, as the receiver of the same.

The defendant controverts those propositions, and claims that the agreement and course of dealings established between the two banks no other relation that that of creditor and debtor; that in respect to sight or demand paper, designated *or* "cash items," which complainant at the date of its transmission charged up to the Fidelity National bank and which the latter on receipt thereof credited to the complainant, such relation of creditor and debtor arose when such paper was received by the Fidelity bank and credited on its books to the complainant; that in respect to paper payable on a certain day after date or after demand, called "time paper," the creditor and debtor relation between them commenced upon the actual collection of such paper and when the Fidelity National bank gave complainant credit for the same. It is further claimed

for the defendant that the proceeds of all such paper received and collected were so mingled and blended by said Fidelity National bank with its own funds and credits as to be undistinguishable or incapable of identification, and that for the amount of its
297 debt or claim complainant can only share *pro rata* with other creditors of the Fidelity National bank in the distribution of its assets in defendant's hands.

The facts and circumstances specially relied on by counsel for defendant to support their contention of a creditor and debtor relation between the two banks are, first, the printed words "for collection, for credit," found in the letter-heads used by complainant in transmitting paper to the Fidelity bank; secondly, the act of the parties in debiting and crediting the "cash items" at the dates of transmission and receipt, and, thirdly, the statement, made by complainant's cashier, Mr. E. P. Graham, that in thus charging the Fidelity bank with such "cash items" he understood or intended that the latter thereupon became indebted to his bank. It is true that Mr. Graham in his deposition makes such a statement; but his meaning, as subsequently explained, was obviously that the Fidelity National bank was chargeable with such items and would upon the collection thereof be liable to complainant for the same. He hardly meant to be understood that, upon his banks making such a charge as paper transmitted, the property in such paper thereupon vested in the Fidelity bank, for in other portions of his testimony he clearly states that it was not intended to transfer the paper to the collecting bank or to open any deposit account with it. On the other hand, the Fidelity National bank did not understand or so interpret the contract as to consider itself absolutely bound to the complainant for all such paper or so much money deposited with it, or that by crediting the complainant with the amount
298 thereof it becomes the *the* owner of the paper. This is clearly shown in its reply to complainants letter of May 25, '87, where it is said, "We collect at par and include in our remittances anything collected to date" (of remittances).

This cotemporaneous construction placed upon its undertaking by the Fidelity bank is inconsistent with the idea that an actual present indebtedness arose upon its receipt of such paper for the amount thereof, so that it thereupon became the owner of the same. The parties in this contract made no distinction between "time paper" and "cash items." The same endorsement, "Pay Fidelity National Bank of Cincinnati, Ohio, for collection, for Commercial National Bank of Philadelphia, Pa.," was placed upon both classes of paper alike. In keeping their account with each other "cash items" were charged and credited before and "time paper" after collection.

This difference in time of making such entries cannot, when considered in connection with the express agreement of the parties, operate to split up their contract, so as to make one rule for "cash items" and another for "time paper." There was no such understanding; but in connection with the mode adopted of charging and crediting "cash items" and transmitted and received, it is said

by counsel for defendant that the Fidelity National bank in some instances remitted to complainant on the dates designated before actual collection; that "cash items" received, say, on the 10th of May would in some cases be remitted on the 11th of May, before the same was collected by the Fidelity bank. If any such instances actually occurred, which does not appear satisfactorily to the
299 to be the fact, the act of remitting was wholly gratuitous on the part of the Fidelity bank, was not in accordance with its own interpretation of its undertaking, and could not have the effect of annulling or modifying the real contract of the parties; now can the printed words "for collection, for credit," found in letter-heads which complainant generally used in forwarding paper to the Fidelity bank, control the express written contract of the two banks; that contract is found in the proposition made by the one and accepted by the other.

The offer was to "collect at par all points west of Pennsylvania and remit the 1st, 11th, and 21st of each month." In accepting that proposition complainant did not intend by the use of printed letter-heads containing the words "for collection, for credit," to change or modify the offer made by the Fidelity bank of to suggest a different arrangement; neither did the Fidelity bank so understand complainant's letter of acceptance. The printed words "for collection, for credit," cannot now be reverted to for the purpose of showing a different contract or arrangement from that embraced in the proposition made and accepted. Any such operation and effect given to these printed words would do manifest violence to the clear intention of the parties and violate the well-settled rule that printed words, such as "for collection, for credit," must be controlled by the written proposition made and accepted if the latter is inconsistent with the former. Ordinarily, when a customer sends commercial paper to a bank to credit the proceeds and such credit is given when the paper is collected, if nothing more appears, the relation thereby created between the parties is that of creditor and debtor.
300 The bank becomes the customer's debtor for the amount so credited, subject to payment on demand, but is under no duty or obligation to remit. In the present case the arrangement prepared in and by the 2nd proposition involved the performance by the Fidelity National bank of two agency duties and functions, viz., the undertaking to collect all papers payable west of Pennsylvania sent it by complainant and the obligation to remit the proceeds at or upon designated dates. In addition to the agency services contemplated, the special or restrictive endorsement, the form of which was made and suggested by the Fidelity bank, placed upon the paper transmitted by complainant would in and of itself have created the relation of principal and agent between the two banks. We think this is settled by the rule laid down in White *v.* National Bank, 102 U. S., p. 660, 661, and by the decisions of this court in Winter's Bank *v.* Armstrong, receiver, 37 Fed. Rep., 508, and Montgomery Nat'l Bank *v.* Armstrong, receiver, 36 Fed. Rep., 59.

In the latter case the endorsement which the transmitting bank placed upon the draft forwarded to the Fidelity bank was in all

essential particulars the same as that employed by complainant, and this court held that the violation thereby created between the two banks was that of principal and agent, and the Montgomery National bank, having traced the proceeds of its paper into the receiver's possession, was allowed to recover the same as a trust fund. In the Montgomery bank case there was, besides the special endorsement, a direction, conta-ned in the letter of transmission, to remit the proceeds of the collection, without any specification as to the time of remitting. Here the dates for making remittances are speci-
301 fied. In the Montgomery bank ca-e the law fixed or prescribed "a reasonable time" from date of collection in which the remittance by the agent should be made. Here the parties have in advance agreed upon & designated the time or times for remitting. This difference is insufficient to distinguish the two cases. But the question is put beyond all doubt if, as we may properly do, we read into the restrictive endorsement which complainant placed upon all the paper it transmitted—the special contract of the parties, made by complainant's acceptance of said 2nd proposition. It would then stand thus: "Pay to the Fidelity Nat'l bank for collection for Commercial Nat'l Bank of Philadelphia, Pa. This paper is to be collected at par and the proceeds remitted to the Commercial National bank on either the 1st, 11th, or 21st day of the month next after day of collection, without exchange." That such an endorsement as this would make the receiving bank the agent of the transmitting bank admits of little or no debate. The contract of the parties, taken in connection with the special endorsement agreed upon by both, renders it clear, both upon principal and authority, that so far as concerns the paper in question the relation between complainant and the Fidelity National bank was not that of creditor and debtor, but that of principal and agent.

The next question presented is, Did they occupy any other or different relation to each other as to the proceeds of such paper after actual collection thereof by the agent bank or by its subagent? The agency relation being established as to the paper, the money received thereon should stand upon the same footing and be held in the same capacity by the collecting bank. The relation of principal and agent as to the proceeds of such paper could not be
302 changed to that of creditor and debtor without the consent or concurrence, express or implied, of both parties. The agent certainly could not by an act of his own divest himself of his fiduciary character in respect to the proceeds of paper he had collected as agent. His method of keeping his accounts with his principal would not terminate his agency relation or convert him into a mere debtor without the assent, express or implied, of his principal. In the present case there was no intention, express or fairly to be implied, that the parties considered the proceeds of the paper as standing upon a different footing from the paper itself. The accounts which they mutually kept in their business were properly principal and agency accounts as distinguished from creditor and debtor accounts. They were kept in the usual way banks keep their collection accounts. It was not the understanding of either, certainly not

of complainant, that any creditor or debtor relation as such was to be created in respect to the proceeds of paper sent out for collection. The first proposition submitted by the Fidelity National bank perhaps contemplated a creditor and debtor connection, but the 2nd, 3rd, and 4th upon their faces did not. Aside from the contract embodied in the accepted proposition the plain meaning of the special endorsement used is that the Fidelity National bank was to collect the paper and receive the proceeds "for account" of the complainant and such proceeds were to be remitted on certain days next after collection. We think it clear that the principal and agency relation created as to the paper continued as to the proceeds thereof.

Such being the relation of the two banks, the remaining question is how far or to what extent can complainant follow and impress upon the proceeds of its paper a trust as against the funds in
303 the hands of the defendant, as receiver of the Fidelity National bank's assets.

When an agent or one occupying a fiduciary position converts trust property or moneys to his own use or improperly invests the same in other credits or securities two remedies are open to the principal. He may elect to treat such agent as his debtor for the amount or he may follow his property or funds, so long as the same can be traced and identified, until they reach a *bona fide* holder thereof without notice of his right and impress upon them either in their original or substituted form a *a* trust.

The complainant seeks the latter remedy, and through its counsel claims that a trust should be established in its favor against all the assets of the Fidelity bank in the possession of defendant without imposing upon it the duty of tracing its funds into the receiver's hands, because such funds, whether actually received by the defendant as receiver or not, have gone to swell the estate or assets of said Fidelity National bank. Some cases are cited which seem to support this position, but they are not sound in principle nor in harmony with the decided weight of authority. In seeking to follow and impress a trust character upon funds which an agent has misapplied it is incumbent upon the principal to clearly trace such funds into the hands of the party against whom the relief is sought, and so long as the trust fund or property, in either its original or substituted form, can be traced and identified it may be followed and recovered by the true owner, provided it has not come into the possession of some *bona fide* holder for value without notice. This right of the principal "only ceases when the means of ascertainment fails" or when his property or fund has reached a *bona fide* holder for value and without notice of the trust.

It is not deemed necessary to review the numerous author-
304 ities on this question. The rule is now well settled by repeated decisions both of the State and Federal courts, which have followed and applied the principal laid down by Lord Ellenborough in Taylor *v.* Plumer, 3 M. & Selw., p. 512. The leading cases in this country are here simply referred to:

Overseers of the Poor *v.* Bank of Va., 2 Grat., 544.
Whitley *v.* Fay, 6 Jones Eqs., 34.
Thompson *v.* Parkins, 3 Moran, 232.
Kip *v.* Bank of N. Y., 10 John., 63.
Van Olen *v.* American Nat'l Bank, 52 N. Y., 1.
National Bank *v.* King, 57 Penn. St., p. 202.
Cook *v.* Tullis, 18 Wallace, 332.
Schaler *v.* Laclide Bk., 27 Fed. Rep., 424.
Nation Bank *vs.* Insurance Co., 104 U. S., 54.
Winters' Bank *v.* Armstrong, receiver, and Montgomery National Bk. *v.* Armstrong, receiver, heretofore decided by this court.

Those authorities imposed upon complainant the duty of tracing the funds it seeks to have impressed with a trust character into the defendant's possession, either in their original or in some substituted form, and the burden of identification is imposed upon all owners seeking to follow their property or its proceeds. No well-considered case has gone to the extent of holding that when an agent converts or misappropriates his principal property or funds, and thereafter fails, his general estate will be impressed with a trust for the reimbursement of such principal on the ground that such estate has been benefited and to an equal amount by the agent's breach of duty. Every creditor could vest a like claim to priority of satisfaction on the same ground. The right of the owner to
305 follow and recover his property rests upon a princip*al* altogether different. In the present case the complainant, upon the doctrine of the cases cited, can only recover from the defendant such portions of the proceeds of its paper as it can trace into the hands of the receiver, either in their original or in some substituted form. The Fidelity National bank having debit and credit balances with its numerous subagents or correspondents who made the actual collection of complainant's paper, this court, upon the preliminary hearing of the cause, directed a reference to a special master to ascertain and report what funds derived from complainant's paper had come into the defendant's possession as receiver. The special master made his first report in the premises, which showed that complainant's said funds were mostly collected by subagents of the Fidelity bank; that such subagents, having mutual accounts with the Fidelity National bank, credited the latter with the amount of such collections, and that at the date of the Fidelity bank's suspension it had credit balances with some and debit balances with other of such subagents. This still left the fact sought to be ascertained in some doubt, and the court thereupon directed the special master to make an amended and supplemental report and show what portion of the paper transmitted by complainant to the Fidelity National bank between the 4th and 20th June, inclusive, was collected by correspondents of said Fidelity bank and credited to the latter, and in what cases the accounts between said Fidelity bank and said correspondents exhibited a continuous balance due the former

from the latter down to the date of the Fidelity bank's failure as large or larger than the amount of the proceeds of complainant's said paper so collected and credited by said correspondents respectively to said Fidelity bank, and in what instances and to what amounts such balances so due from said correspondents at the time of the Fidelity bank's suspension were subsequently paid over to and received by the defendant. The special master filed his amended report on the 27th of May, 1889, showing that the defendant had, subsequent to the suspension of the Fidelity bank, received from said correspondents the proceeds of complainant's said paper to the amount of $7,209.59. Under the authorities the complainant could have reached and subjected those credits in the hands of said correspondents which were made up by the proceeds of its paper. It can still follow the same in the hands of the defendant, to whose possession the funds belonging to complainant are thus clearly traced to the extent of $7,209.59.

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Various exceptions are taken to the master's original and amended reports. They need not be noticed or considered in detail. In the judgment of the court the findings and conclusions of the special master are clearly sustained by the evidence and the exceptions are overruled, and said amended report of May 27, '89, is found to be correct and is confirmed. A decree will be accordingly entered for complainant, directing the defendant to pay over to it or its counsel of record said sum of $7,209.59 and such dividend as he may hereafter receive on the sum of $1,577.89 collected by the 5th Nat. Bank of St. Louis on complainant's said paper and credited to the Fidelity bank. Each party will pay half the costs herein, including the fee of the special master, which is fixed by the court at the sum of $150.00.

HOWELL E. JACKSON,
Circuit Judge.

307 Harmon, Colston, Goldsmith & Hoadly, for complainants.
E. W. Kittredge, Jos. Wilby and W. B. Burnet, for defendant.

SOUTHERN DISTRICT OF OHIO, *ss:*

A true and correct copy of the original on file in this office.
Attest:
[Seal of the Circuit Court, Southern District of Ohio.]
B. R. COWEN, *Clerk,*
By ROB'T C. GEORGI, *Deputy.*

308 [Endorsed:] Supreme Court U. S. 1889, October term. No. 1210, 1211. The Commercial National Bank of Penna., app't, *vs.* Armstrong, rec'r, and Armstrong, rec'r, *vs.* Commercial National Bank. Stipulation & addition to record.

[Stamped:] Office Supreme Court U. S. Filed Sep. 12, 1889. James H. McKenney, clerk.

Endorsed on cover: Case No. 13,617. S. Ohio C. C. U. S. No. 404. The Commercial National Bank of Pennsylvania, appellant, *vs.* David Armstrong, receiver of the Fidelity National Bank of Cincinnati. Case No. 13,618. No. 405. David Armstrong, receiver of the Fidelity National Bank of Cincinnati, appellant, *vs.* The Commercial National Bank of Pennsylvania. Filed August 28, 1889.

148 U.S. 50

Office Supreme Court U. S.
FILED.
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JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1892.

The Commercial National Bank of Pennsylvania,
Appellant,
vs.
David Armstrong, as Receiver of the Fidelity National Bank of Cincinnati.
No. 76.

David Armstrong, as Receiver of the Fidelity National Bank of Cincinnati,
Appellant,
vs.
The Commercial National Bank of Pennsylvania.
No. 77.

Appeals from the Circuit Court of the United States for the Southern District of Ohio.

Argument for The Commercial National Bank of Pennsylvania.

EDWARD COLSTON,
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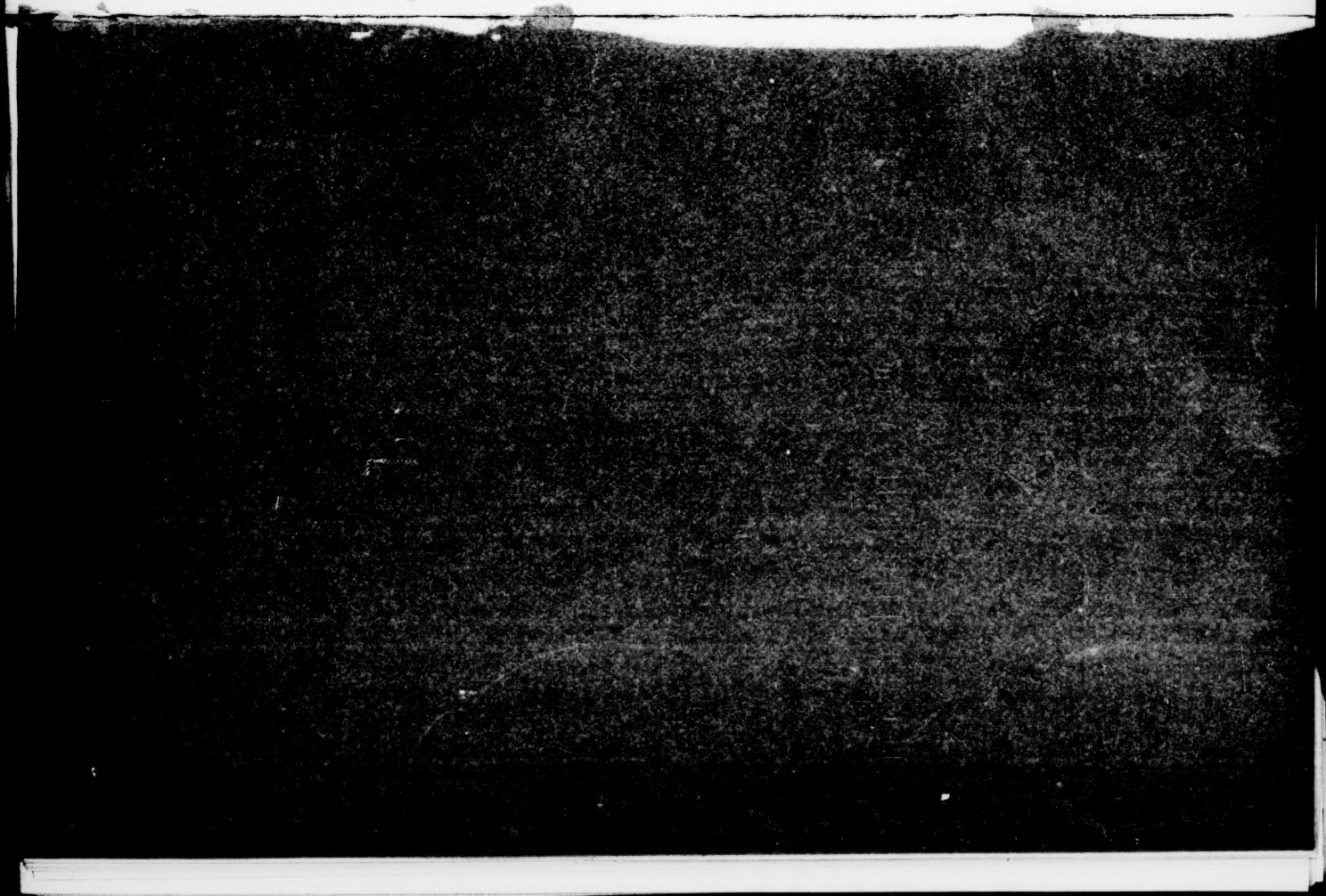
THE OHIO VALLEY CO., REAR 143 RACE ST., CINCINNATI.



Supreme Court of the United States.

The Commercial National Bank of Pennsylvania,

Appellant,

vs.

David Armstrong, as Receiver of the Fidelity National Bank.

David Armstrong, as Receiver of the Fidelity National Bank,

Appellant,

vs.

The Commercial National Bank of Pennsylvania.

APPEALS

From the Circuit Court of the United States, for the Southern District of Ohio.

STATEMENT OF THE CASE.

These are appeals from a decree of the Circuit Court of the United States for the Southern District of Ohio. The decree below was in favor of the Commercial National Bank, appellant and complainant below, for a part of the relief sought in its bill, and was in favor of David Armstrong, receiver, respondent below, as to another part of said relief. Both parties appealed. The object of the suit, which was in

equity, was to establish the right of the complainant to the proceeds of certain notes, drafts and checks, amounting to something over $17,000, on the ground that said moneys are held by the respondent below, receiver of the Fidelity National Bank, in trust for the complainant—the true owner thereof—said paper having been sent to said Fidelity National Bank by complainant for collection and for remittance of proceeds.

The facts appearing by the evidence, and practically undisputed, are as follows:

On February 12, 1887, the Fidelity National Bank sent to complainant, doing business in Philadelphia, the following letter (see Record, page 13, Exhibit "A," to answer of respondent):

U. S. DEPOSITORY.

THE FIDELITY NATIONAL BANK.

CAPITAL, $1,000,000.

BRIGGS SWIFT, PRESIDENT. AMMI BALDWIN, CASHIER.
E. L. HARPER, VICE-PRESIDENT. BENJAMIN E. HOPKINS, ASS'T CASHIER.

CINCINNATI, 2, 12, 1887.

Commercial National Bank, Philadelphia, Pa.:

GENTLEMEN—Inclosed herewith we hand you our last statement, showing us to be the second bank in Ohio in deposits in the tenth month of our existence. We should be pleased to serve you, and trust you will find it to your advantage to accept one of the following propositions:

No. 1. We will collect all items at par, and allow 2½ per cent. interest on daily balances, calculated monthly. We will remit any balance you have above $2,000 in New York draft, as you direct, or ship currency at your cost for expressage.

No. 2. Will collect at par all points west of Pennsylvania, and remit the 1st, 11th and 21st of each month.

No. 3. We will collect at par Ohio, Indiana and Ken-

tucky items, and remit balance every Monday by draft on New York.

We do not charge for exchange on propositions Nos. 1, 2 and 3.

No. 4. Will collect Cincinnati items and remit daily at 40 cents per thousand, or 20 cents for $500 or less.

National banks not in a reserve city can count all they have with us as reserve.

Your early reply will oblige,

Respectfully yours,

E. L. HARPER, *V.-P.*

This letter was replied to by the complainant under date of February 18th, wherein, among other things, the complainant wrote: "We accept your proposition No. 2 in your letter of the 12th inst., and I inclose for collection—." (See Record, bottom of page 13, Exhibit "B," to answer of respondent.

The Fidelity National Bank caused to be made and sent to complainant a rubber stamp for use in indorsing papers sent, in pursuance of the foregoing arrangement, by the complainant to the Fidelity National Bank for collection. This stamp was as follows:

"Pay Fidelity National Bank of Cincinnati, O., or order, for collection for Commercial Bank of Philadelphia, Pa.

E. P. GRAHAM, *Cashier.*"

(See Record, page 41, Exhibit No. 1, to deposition of E. P. Graham, Cashier.)

Under this arrangement the Commercial National Bank sent to the Fidelity National Bank, from time to time, paper for collection, indorsed with the above stamp, some paper at sight, some on demand, and some at various times after date, the proceeds, when collected, to be remitted at the stated in-

tervals, namely, on the 1st, 11th and 21st of each month. It is true that sight or demand paper, when sent by complainant under the above arrangement to the Fidelity National Bank, was charged by the former on its books to the latter at the date on which the paper was sent, and that on the date on which it was received it was credited by the Fidelity National Bank to the complainant on the books of the Fidelity National Bank, but this credit of the Fidelity National Bank of the above paper was a credit subject to payment; that is to say, it was a conditional credit, the proceeds not being remitted to the sending bank, the complainant, prior to actual collection by the Fidelity National Bank, and any paper credited by the Fidelity National Bank and not collected was charged back to the complainant and the paper returned to it. Time items were, at the date at which they were sent by the complainant to the Fidelity National Bank, entered upon a collection register of the complainant, and were charged to the Fidelity National Bank by complainant as the complainant received advices of the collections of such items by the Fidelity National Bank.

The Fidelity National Bank, in compliance with the agreement aforesaid, remitted on the 1st, 11th and 21st of each month all amounts collected to date, but, as already stated, did not remit in advance of collection; for example, on May 25, 1887, the complainant wrote the Fidelity National Bank as follows: (See Record, p. 41.)

"We don't wish to complain, but would like to understand why your remittance to us of May 21 only included items sent you up to May 14 and received by you on the 16th. We have to explain these things to our depositors, and wish to act intelligently on the subject."

To this the Fidelity National Bank replied by writing across the face of the above letter the following:

"GENTLEMEN: We collect at par and include in our remittances everything collected to date.

"E. L. HARPER, *V. P.*"

On June 20, 1887, the Fidelity National Bank failed, having at that time in its hands, or in the hands of other banks to which the same had been sent by it for collection, proceeds of commercial paper sent to it by complainant under the above arrangement, indorsed as above mentioned, amounting to $16,851.92, no portion of which has ever been paid to complainant. This paper had been sent by complainant to the Fidelity National Bank from time to time between the 4th and 20th days of June, 1887.

The case was referred to a Master to ascertain and report,

1st. What amounts of the proceeds of paper of above description received by the Fidelity National Bank from complainant between June 4 and June 20, 1887, was paid to the receiver of the Fidelity National Bank after the failure thereof.

2d. What amount, if any, of the proceeds of such paper was remitted to and received by the Fidelity National Bank between said dates, and what amount thereof is traceable to the receiver.

3d. What amount, if any, of the proceeds of such paper was collected by correspondents of the Fidelity National Bank and credited *with the assent of the Fidelity National Bank or the receiver thereof* by them on indebtedness due from said Fidelity National Bank. (Italics ours.)

4th. What amount of cash was on hand in the said Fidelity National Bank at the time of its failure, and how much cash was taken in and paid out during the period from June

4 to June 20, inclusive, from any and all other sources. (See Record, pages 147–8.)

The Master reported (Record, page 167 and following pages), among other things:

That of the proceeds of the paper remitted to and received by the Fidelity National Bank between June 4 and June 20 from complainant there was traceable to said Armstrong the sum of $7,209.59, and that of the proceeds of said paper there was collected by correspondents for the Fidelity National Bank, and credited with the assent of the Fidelity National Bank or its receiver on indebtedness due said correspondents from the Fidelity National Bank, $7,734.52.

And further, that at the time of the failure of the Fidelity National Bank there was on hand in cash in said bank the sum of $110,230.03.

Upon this report coming in, and based upon it, the court rendered a decree in favor of complainant for the sum of $7,709.59, and for such further sum as respondent might receive as dividends from the Fifth National Bank of St Louis on the sum of $1,577.89, being the amount of the paper transmitted to said bank and collected by defendant, and dividends on which amount were or might be payable to said respondent; and in favor of respondent as to the rest of the claim, and from this decree both parties appealed.

ASSIGNMENT OF ERRORS.

Complainant assigns for error that the court held that as to the sum of $8,063.44, the proceeds were not traceable into the hands of respondent as trust funds, because that amount was appropriated by correspondent banks of the Fidelity, as credits on indebtedness due them by the Fidelity.

ARGUMENT.

It will be convenient, in the consideration of these cases, to argue the two appeals separately; although they involve, to a certain extent, the same questions both of law and of fact. Further, the order in which the questions present themselves to the mind makes it convenient, in this argument, to begin with the appeal of Armstrong, receiver, as it involves a question which lies at the foundation of complainant's right of action.

I.

Respondent claimed that, by virtue of the transactions heretofore related, the title to all of the paper, the proceeds of which are in litigation, passed to the Fidelity Bank as a purchaser for value, while complainant claimed that the Fidelity Bank had no title thereto, but merely held it, as agent, for collection.

It is settled that where paper is indorsed "for collection," or other equivalent indorsement, as was the case here (Record, pages 38, 39, 41), no title passes thereby to the bank receiving it under such indorsement or any subsequent indorsement.

Sweeny v. *Easter*, 1 Wall. 166.

White v. *National Bank*, 102 U. S. 658.

Armstrong v. *National Bank of Boyertown*, 14 S. E. Rep. 411.

Sutherland v. *The Bank*, 31 Mich. 230.

National Butchers and Drovers Bank v. *Hubbell*, 117 N. Y. 384.

Importers and Traders National Bank v. *Peters*, 123 N. Y. 272.

Manufacturers Bank v. *Continental Bank*, 148 Mass. 553.

Freeman's Bank v. *National Tube Works*, 151 Mass. 413.

First National Bank of Montgomery v. *Armstrong*, 36 Fed. Rep. 59.
Commercial National Bank v. *Armstrong*, 39 Fed. Rep. 684.
First National Bank of Wellston v. *Armstrong*, 42 Fed. Rep. 193.
First National Bank of Crown Point, Indiana, v. *First National Bank of Richmond, Indiana*, 76 Ind. 561.
Hoffman v. *Bank*, 46 New Jersey Law 606.
Ancher v. *Bank of England*, Doug. 637.
Sigourney v. *Lloyd*, 8 B. & C. 622.
Blaine v. *Bourne*, 11 R. I. 119.

In *Sigourney* v. *Lloyd*, the plaintiff, being the holder of a bill of exchange, indorsed it with the words, "Pay to Samuel Williams, Esq., of London, or his order, for my use," and sent it to Williams to be collected. Williams indorsed the bill to the defendants, who paid him full value for it, and failed. The bill was paid to defendants at maturity. Plaintiff brought an action for it, and, upon a verdict for plaintiff subject to a special case setting out these facts, plaintiff had judgment. Lord Tenterden, C. J., said:

"The use of indorsements of this kind is not small, nor are they, as it seems to me, inconsistent with the interests and convenience of commerce. Such an indorsement will not prevent the indorsee from receiving the money from the acceptor when the bill becomes due. If he pay it to his principal all will be well, but the indorsee must look to him for the application of it. It will have the effect of preventing a failing man from disposing of the bill before it becomes due, and from pledging it to relieve himself from his own debts at the expense of his correspondent. I can not see that the interests of commerce will be prejudiced by our holding that such an indorsement is restrictive. On the contrary, I think that the

interests of commerce will thereby be advanced. It is said that it can not be expected that the bankers or others, when requested to discount such bills as this, should look into the accounts between the principal and his agent. I agree it can not be expected they should; but still, if they take the bill so indorsed, they take it at their peril, and must be bound by the state of accounts between those parties."

In *Sweeny* v. *Easter*, an action of trover was brought by Easter & Co. against Sweeny and others, for some promissory notes which plaintiffs had indorsed in blank and deposited with S. Harris & Sons, a banking house in Baltimore, for collection. Harris & Son indorsed them as follows: "*Pay Sweeny, R. F. & Co., for collection.* SAM. HARRIS & SONS." Harris & Sons failed, and Sweeny applied the proceeds of these notes upon debts due to them from Harris & Sons. One of the firm of Harris & Sons was called to testify that his firm had received the paper for collection merely, and not as owners thereof, and that the form of indorsement was intended to give defendants notice thereof. Objection was made to the witness testifying, on the ground, among other things, that he could not be permitted to contradict or vary the legal effect of his indorsement. This objection was overruled, and this court, speaking through Mr. Justice Miller, in affirming the judgement, said:

"Now, does this testimony of the witness, to the effect that Harris & Sons were not the owners of the paper, and did not sell it to defendants, nor intend to give them any lien on, or title to the paper, or its proceeds when collected, contradict or vary the legal import of this indorsement? We can not see that it does. It rather explains the transaction in perfect conformity with the real meaning and effect of the indorsement. The words, 'for collection,' evidently had a meaning. That meaning was intended to limit the effect which would have been given to the indorsement without

them, and warned the party that, contrary to the purpose of a general or blank indorsement, this was not intended to transfer the ownership of the note or its proceeds."

In *White* v. *National Bank*, the form of the indorsement was as follows: "Pay S. V. White, or order, for account Miners National Bank, Georgetown, Colorado."

White, having advanced money to the bank on bills so indorsed, brought an action against it upon this indorsement.

Miller, J., said:

"The language of the indorsement is without ambiguity, and needs no explanation, either by parol proof or by resort to usage. The plain meaning of it is that the acceptor of the draft is to pay it to the indorsee for the use of the indorser. The indorsee is to receive it on account of the indorser. It does not purport to transfer the title of the paper, or the ownership of the money when received."

In *Freeman's Bank* v. *Tube Works*, the Supreme Court of Massachusetts said:

"The indorsement from the defendant to the People's Bank, although in terms unrestricted, was without consideration, and merely for the purpose of collection. The People's Bank became the agent of the defendant, and the defendant, as owner of the drafts, can avail itself of all that its agent did for its protection.

"The subsequent indorsements through which the drafts came to the plaintiff were both restrictive, giving notice that the ownership had not passed beyond the People's Bank. They purported to be made only for the purpose of collection on account of the owner, and they merely passed the legal title so far as to enable the indorsees to demand, receive and sue for the money to be paid. It is well settled, that upon such an indorsement the owner may control his negotiable paper until it is paid, and may intercept the proceeds of it in the hands of an intermediate agent."

Nor is evidence admissible to vary the effect of such indorsement, or to show that it was intended that title should pass to the indorsee. This appears from the quotations already made from *Sweeny* v. *Easter*, and *White* v. *National Bank*, and *Freeman's Bank* v. *National Tube Works*.

The contract made by correspondence between the parties constituted the relation of principal and agent—not that of debtor and creditor—between them.

The Fidelity National Bank in its letter (Record, page 13), said:

"We should be pleased to serve you, and trust you will find it to your advantage to accept one of the following propositions:

"* * * * * * *

"No. 2. Will collect at par all points west of Pennsylvania, and remit the 1st, 11th and 21st of each month.

"No. 3. We will collect at par Ohio, Indiana and Kentucky items, and remit balance every Monday by draft on New York."

Complainant accepted the proposition No. 2, and we think it plain that this letter contemplated the relation of principal and agent only.

In *Manufacturers Bank* v. *Continental Bank*, the Fidelity National Bank wrote to the plaintiff, making, in substance, the the propositions numbered 2 and 3, and plaintiff there accepted a proposition to credit at par sight items on all points in Ohio, Indiana and Kentucky where there are banks, subject to payment, and make collections on same points, remitting in New York exchange weekly, without charge, and including by special arrangement also St. Louis items.

The indorsement was in the form used in the case at bar, and the Continental Bank, having collected and credited to

the Fidelity Bank the amount of a draft, the Manufacturers Bank brought suit for the amount.

The Supreme Court of Massachusetts said:

"In the transaction upon which the plaintiff's claim is founded, the plaintiff and the Fidelity National Bank stood in the relation to each other of principal and agent. The business in which they were engaged was the collection of checks and drafts which belonged to the plaintiff or to the plaintiff's customers. Their contract, contained in their letters, shows, first, an offer to the plaintiff by the Fidelity National Bank, of its 'services for making collections in the West,' and then a proposition to credit sight items at par, subject to payment, and to make collections, remitting weekly in New York exchange, without charge. This proposition was accepted by the plaintiff, and the Fidelity National Bank thereby became the plaintiff's agent, to collect for it Commercial paper."

Nor did it make any difference that the Fidelity National Bank credited the amount of the sight items to the plaintiff immediately upon their receipt, or that the complainant charged such items to the Fidelity's general account when they were sent.

In the case just cited, the Court, after the remarks just quoted, said:

"Under this arrangement, the credit given for a check was merely provisional until the check was paid. It did not create a debt from the Fidelity National Bank to the plaintiff, and it did not change the ownership of the check. In that respect their relations to each other were very different from those between a banker and a depositor, where checks are received on deposit as cash, and an absolute right to draw against them is given.

"Their dealings, under this contract, were in conformity to this construction of it. It was a custom of the Fidelity National Bank to charge back to the plaintiff, and to return to it by mail checks and drafts which were not paid. The

indorsement of the check which the defendant collected was, 'for collection for Manufacturers National Bank of Boston, Mass.' This indorsement would give notice of the plaintiff's title to all parties into whose hands the check might come."

In *National Butchers and Drovers Bank* v. *Hubbell*, where the facts were similar to those of the case at bar, the Court of Appeals of New York said:

"The defendant, Hubbell, as one defense to the claim of the plaintiff, insists that Wilkinson & Co., upon the receipt by them of the various checks and drafts or other pieces of paper payable on demand, and upon the crediting of the amounts thereof to the plaintiff upon their books, without waiting for the payment of the same, became the owners thereof, and that these facts amounted to a transfer of the paper, or its proceeds, to Wilkinson & Co. In that, we think, he is mistaken. The indorsement upon each piece of paper was for collection simply, and by virtue of that indorsement no title passed to the firm, but, on the contrary, it became simply the agent of the plaintiff to present the paper, demand payment thereof and remit to it. Under such circumstances, the title to the paper remained in the party sending it.

"The letter accompanying the inclosures of paper amounted simply to a direction to credit after the collection was made; and up to the time that the funds were actually received by the firm, it certainly would make no alteration in the law relative to indorsement for collection only.

"Nor does the finding of the learned justice at Special Term, as to the custom pursued between the parties, alter the law in regard to the title to the paper before the funds arising from the payment thereof were actually received by the firm. The finding shows that the credit was a provisional one only. *It was a mere matter of bookkeeping.* It would seem to have been more in the form of a memorandum of the different pieces of paper received; because, if any were not paid, such as went to protest were at once charged back upon the books of the firm against the plaintiff, and returned to it with the

expenses of protest charged to it. The firm never became absolutely responsible to the plaintiff for the amount of these collections until the collections were actually made and the proceeds received by them.

"The property in these different pieces of paper, therefore, never vested in the firm, and the firm never purchased them or advanced any money upon them. Hence, the firm never owned them."

We think it plain, from the cases cited, and others which will be cited hereafter as to other branches of this case, that the Fidelity National Bank never acquired any title to the paper the proceeds of which are in controversy, but was merely an agent for its collection, and held it as such.

II.

As the Fidelity National Bank was merely an agent for collection, if the paper belonging to complainant or the proceeds thereof was in its hands at the date of the failure, the complainant has a right to follow that paper or its proceeds so long as the same can be identified, into whosesoever hands it may come, except into the hands of purchasers for value without notice. This is merely an application of the well-known and general rule as to tracing trust property.

To be sure, it was at one time supposed that this rule had an exception; that where the proceeds had been put into the shape of money they could not be followed, because money has no earmark.

In *Whitecomb v. Jacob*, 1 Salk, 161, the court said:

"If one employs a factor and intrusts him with the disposal of merchandise, and the factor receives the money and dies indebted in debts of a higher nature, and it appears by evidence that this money was vested in other goods and remains unpaid, these goods shall be taken as part of the mer-

chant's estate, and not the factor's; but if the factor have the money it shall be looked upon as the factor's estate, and must first answer the debts of a superior creditor, for, in regard that money has no earmark, equity can not follow that in behalf of him that employed the factor."

This same rule was held in

Ryan v. *Rolle*, 1 Atk. 165, Er.
Ex parte Dumas, ib. 232.
Scott v. *Surman*, Willes, 400.

The rule that money is not earmarked has, however, long since been exploded, and the rule of modern equity may be expressed by saying that money is earmarked just as much as other property, and that as long as the property can be traced at all it will be preserved to the true owner.

In *Taylor* v. *Plumer*, 3 M. & S. 562, Lord Ellenborough said:

"It makes no difference in reason or law into what other form different from the original the change may have been made whether it be into that of promissory notes for the security of the money which was produced by the sale of the goods of the principal, as in *Scott* v. *Surman*, or into other merchandise, as in *Whitecomb* v. *Jacob*, for the product of or substitute for the original thing still follows the nature of the thing itself as long as it can be ascertained to be such, and the right only ceases when the means of ascertainment fail."

In *Pennell* v. *Deffell*, 4 D. M. & G., 372, it was pointed out that even if the trustee mingled the trust funds with his own, it was perfectly easy to separate them by giving the *cestui que trust* a charge upon the whole fund to the extent of his interest.

Knatchbull v. *Hallett*, 13 Ch. Div., 696, is a very interesting case containing the fullest and clearest discussion of the

question that we have anywhere seen. In that case an agent had deposited funds held by him as agent and other funds of his own in his own bank account, the deposit of the agency funds having been made first. Afterward he checked out an amount greater than the whole of his private funds. After his death his executors and his principal both asserted claims to the balance at his bankers. The executors claimed that under the rule in *Clayton's* case, the first drafts were to be applied against the first deposits, and by applying that rule only a very small amount of the agency fund was left, but to that extent the deposit might be charged, and so it was held by Fry, J.; but on appeal the Court of Appeal held that, however, it might be as between two trust funds, in a case where a man had mixed in his bank deposit, funds which he had a right to use, and others which he had not, his drafts for his own use would be considered chargeable to that which he had a right to use.

Sir George Jessel says, at page 710:

"If the bailee sells the goods bailed, the bailor can in Equity follow the proceeds, and can follow the proceeds wherever they can be distinguished, either being actually kept separate, or being mixed up with other moneys. I have only to advert to one other point, and that is this, supposing instead of being invested in the purchase of land or goods, the moneys were simply mixed with other moneys of the trustee, using the term again in its full sense as including every person in a fiduciary relation, does it make any difference according to the modern doctrine of Equity? I say none. It would be very remarkable if it were to do so. Supposing the trust money was 1000 sovereigns, and the trustee put them into a bag and by mistake, or accident, or otherwise, dropped a sovereign of his own into the bag. Could anybody suppose that a Judge in Equity would find any difficulty in saying that the *cestui que trust* has a right to take 1000 sov-

ereigns out of that bag? I do not like to call it a charge of 1000 sovereigns on the 1001 sovereigns, but that is the effect of it. I have no doubt of it. It would make no difference if, instead of one sovereign, it was another 1000 sovereigns; but if, instead of putting it into his bag, or after putting it into his bag, he carries the bag to his bankers, what then? According to law, the bankers are his debtors for the total amount; but if you lend the trust money to a third person, you can follow it. If, in the case supposed, the trustee had lent the £1000 to a man without security, you could follow the debt and take it from the debtor. If he lent it on a promissory note, you could take the promissory note, or the bond, if it were a bond. If, instead of lending the whole amount in one sum simply, he had added a sovereign, or had added £500, of his own to the £1000, the only difference is this, that instead of taking the bond or the promissory note, the *cestui que trust* would have a charge for the amount of the trust money on the bond or promissory note."

This rule was applied in *Hart* v. *Ten Eyck*, 2 Johns. Ch., 108, where Chancellor Kent says:

"If a party having charge of the property of others, so confounds it with his own that the line of distinction can not be traced, all the inconvenience of the confusion is thrown upon the party who produces it, and it is for him to distinguish his own property or lose it. If it is a case of damages, damages are given to the *utmost value* that the article will bear."

In *Farmers & Mechanics Bank* v. *King*, 57 Pa. St., 208, the court said:

"But it is insisted that there was no earmark to the money. What of that, if the money can be followed or if it can be traced into a substitute? This is often done through the aid of an earmark. But that is only an index enabling a beneficial owner to follow his property. It is no evi-

dence of ownership. An earmark is not indispensable to enable a real owner to assert his right to property, or to its product or substitute. Evidence of substantial identity may be attached to the thing itself, or it may be extraneous. It is freely admitted that if a trustee or agent receive money of a *cestui que trust*, or principal, and mingle it with his own so that it can not be followed, the *cestui que trust* or principal can not recover it specifically. This is not because the ownership is changed, but because a court can not lay hold of the property as that of the owner. But in regard to money, substantial identity is not oneness of pieces of coin or of bank bills. If an agent to collect money puts the money collected into a chest where he has money of his own, he does not thereby make it all his own and convert himself into a mere debtor to his principal. The principal may by law claim out of the chest the sums which belonged to him before the admixture."

In *National Bank* v. *Insurance Co.*, 104 U. S., 54, this court had presented to it the very question involved in *Knatchbull* v. *Hallett*, and in that case the court said, approving and following the doctrine of *Knatchbull* v. *Hallett*:

"The Master of the Rolls, Sir George Jessel, showed that the modern doctrine of Equity, as regards property disposed of by persons in a fiduciary capacity, is that, whether the disposition be rightful or wrongful, the beneficial owner is entitled to the proceeds, whatever be their form, provided only he can identify them. If they can not be identified by reason of the trust money being mingled with that of the trustee, then the *cestui que trust* is entitled to a charge upon the new investment to the extent of the trust money traceable into it; that there is no distinction between an express trustee and an agent, or bailee, or collector of rents, or anybody else in a fiduciary position; and that there is no difference between investments in the purchase of lands, or chattels, or bonds, or loans, or moneys deposited in a bank account. * *

"This doctrine of Equity is modern only in the sense of its being a consistent and logical extension of a principle

originating in the very idea of trusts, for they can only be preserved by a strict enforcement of the rule that forbids one holding a trust relation from making private use of trust property. It has been repeatedly recognized and enforced in this court."

To these we may add that almost every one of the authorities cited in the preceding head is applicable here.

III.

Having the right to trace its property, we come to the point that the Commercial Bank has done so.

So far as it has recovered, the complainant has shown the existence of the following facts: First, that the paper in question was sent to correspondents; second, that such correspondents were indebted to the Fidelity National Bank in an amount sufficient to cover the complainant's paper; third, that they continued so indebted from the time of the collection of of the paper to the failure of the Fidelity Bank; fourth, in some instances the amount of these particular collections formed the only charge against such correspondents on the books of the Fidelity Bank. (See schedule G, to master's amended report, record, p. 174.)

As to the cases where the collections for plaintiff formed the only charge against the correspondent, and were paid to respondent after the bank failed, we do not see how it is possible to do more in the way of tracing the money into the hands of the respondent. As business is done now, the bank making the collection did not put the identical bills received, if bills were received at all, into a bundle and send them to the respondent; but that is not required, and if any such strictness of tracing were required there would not be one case of tracing funds where there are now a hundred.

The authorities are clear that we have traced to respondent all the money for which we have obtained a decree. On a state of facts just like the case at bar the Court of Appeals of New York, in *National Butchers and Drovers Bank* v. *Hubbell* (*supra*), held that the plaintiff had a right to recover.

In *Frith* v. *Cartland*, 2 Hem & M. 417, the court said:

"In the present case the evidence amounts to this: The bankrupt took £2500 of bills belonging to the plaintiff and discounted them together with bills of his own. He received a check for £3500, besides a further sum which was paid to his credit at the Bank of England. These dealings and the conversion of the proceeds into credits on foreign banks raise the same kind of case as was suggested by the Lord Justice Knight Bruce in his judgment in *Pennell* v. *Deffell*. If a man has £1000 of his own in a box on one side and £1000 of trust property in the same box on the other side, and then takes out £500 and applies it to his own purposes, the court will not allow him to say that that money was taken from the trust fund. The trust fund must have its £1000 so long as a sufficient sum remains in the box. So here Edwards could not be allowed to say that the £284 deposited in the Bank of England was his own and that the trust portion of the fund was that which he took abroad with him, and from which he drew as he required for his own purposes. There is therefore no difficulty in treating the sum at the bank as belonging to the trust, together with what remains of the sum which he took abroad. It appears that Edwards, after passing the property through various transformations, had at last a sum nearly sufficient, together with the money at the bank, to cover the amount of the plaintiff's trust fund as well as Palmer's £500. During the interval he had spent something out of the mixed fund, which expenditure must be attributed to that portion which I may call his own, using the expression subject to the title of Palmer to the £500 about which no question is raised. Unless, therefore, the bankruptcy makes a difference, there can be no ground for denying the plaintiff's title to the fund recovered, or for dividing it *pro*

rata. The court attributes the ownership of the trust property to the *cestui que trust* so long as it can be traced. Here there is no difficulty in identifying it. Throughout the whole series of transformations the bankrupt always held a fund available to meet the claim of the trust. In *Pennell* v. *Deffell* part of the trust fund had been paid into a bank; but it was not earmarked, and was wiped out by subsequent drawings, and the whole ultimate balance could not be fixed with the trust, any more than £1000 of stock which a trustee might happen to acquire after selling £1000 of trust stock and spending the proceeds. So long, however, as the fund can be traced the trustee can not assert his own title to it."

In *Manufacturers National Bank* v. *Continental Bank* (*supra*), it was held that, on a similar state of facts, complainant could have asserted its title to the fund as against the banks making the collections. How does the mere change of the possession of the fund make such a difference? It is plain that it does not, as shown by *National Butchers and Drovers Bank* v. *Hubbell*, before cited.

IV.

We now come to the appeal of the Commercial National Bank of Pennsylvania.

The Fidelity National Bank received from complainant for collection, as complainant's agent, the paper the proceeds of which are here in controversy. Thereafter, the same having come into the hands of sub-agencies of the Fidelity Bank, which sub-agencies had from the form of the indorsement actual notice of complainant's rights, respondent, without the knowledge or consent of complainant, converted the same to his own use, by consenting that said sub-agencies should apply the same in payment of debts due to them from the Fidelity National Bank (Record, page 170). There was in cash in the Fidelity National Bank at the date of its failure $110,000,

which came to the hands of respondent as its receiver. We claim that under the circumstances thus detailed complainant is entitled to a charge on the funds in the Fidelity Bank for the amount of its claim.

The Fidelity National Bank having received complainant's paper upon trust to collect the same and remit the proceeds, might collect it in many ways. If, for example, the paper were the check of one of its customers, on his account, it would simply charge the check to his account, and thereupon the proceeds would be a part of the cash in its hands, not actually distinguished, but entirely capable of being so by taking out that amount of money. So if being indebted to a correspondent it paid its debt with complainant's paper. At the time it did so it collected that paper, at least as against complainant, and complainant had a right to assert that it had that amount of cash in its treasury. That being so, there was no lawful way of getting it out except by paying it to complainant, and the rule of *Knatchbull* v. *Hallett* (*supra*), that drafts will always be applied to that which may lawfully be drawn out, applies, and the complainant's money in both the foregoing cases was in the Fidelity Bank at the time of its failure, and came to the defendant as a trustee for complainant.

In *Peake* v. *Ellicott*, 30 Kan. 161, the court said:

"The question in this case is, whether a trust in favor of the plaintiff is impressed upon the $782.50 delivered to the cashier of the Riley County Bank on November 22, 1881, for the purpose of paying the note of plaintiff executed to the bank, but at that time owned and held by the Harrison National Bank of Cadiz, in Ohio. When the bank, through its cashier, accepted the $782.50, it was not paid by the ptaintiff as a deposit nor accepted by the latter as a deposit, nor was the relation of debtor and creditor between the bank and the plaintiff created by the transaction. On the other

hand, as respects this specific sum, the relation between the plaintiff and the bank must be regarded as that of principal and agent. After the bank received this sum to satisfy the note of the plaintiff, the bank held the money in a fiduciary capacity; if the money was not applied, according to the understanding of the parties, to the satisfaction of the note, it should have been returned to the plaintiff. It was not deposited to be checked out or to be loaned, or otherwise used by the bank: in law the bank held it as a trust fund, and not as the assets of the bank. The defendant, as assignee of the bank, succeeds to all the rights of the bank; but as such assignee he has no lawful authority to retain a trust fund in his hands belonging to the plaintiff, and which the bank at the time of receiving the same promised and agreed to apply in payment of plaintiff's note. As the money was a trust fund, and never belonged to the bank, its creditors will not be injured if it is turned over by the assignee to its owner. Even if the trust fund has been mixed with other funds of the bank, this can not prevent the plaintiff from following and reclaiming the fund; because if a trust fund is mixed with other funds, the person equitably entitled thereto may follow it, and has a charge on the whole fund for the amount due."

In *People* v. *City Bank of Rochester*, 96 N. Y. 32, the facts were that Sartwell, Hough & Ford were depositors in the City Bank of Rochester, and also, from time to time, discounted their notes payable in New York City, with the understanding that they should be paid at the bank. In November, 1882, two notes payable in January following, for $8000, being then outstanding, they gave the bank their checks for the amount, less a rebate of interest, which checks were duly charged to their account, the amount thereof deducted from their deposit, and the bank entered on its books a memorandum to the effect that the notes were paid. At the time the bank had sold the notes, and before paying them, and before they were due, the bank failed and a

receiver was appointed, who found in the vaults of the bank some cash, but less than $8000, but subsequent thereto collected about $75,000. Sartwell, Hough & Ford asked for an order requiring the receiver to pay the notes, which was granted, and the Court of Appeals, in affirming the order, said:

"The checks of the petitioners were money assets in the hands of the bank, and were so treated by all parties; they were delivered to it with explicit directions to apply the proceeds on payment of the notes; those directions were assented to by the bank officer, and the checks collected from the general fund. From that moment the bank was bound to hold the money for and apply it to that purpose and no other, or, failing to do so, return it to the petitioner. As to it the bank was bailee or trustee, but never owner. It is estopped from saying that all this is matter of book-keeping. It assumed a duty, and the receiver, as its representative, is bound by it. Nor does this obligation at all depend, as the appellant seems to suppose, upon the question when, where and to whom the notes were to be paid; whether presently or in the future is immaterial.

"The specific object for which the fund was created was the payment of the notes, and its character does not depend upon these incidental circumstances. The checks were impressed with a trust, and no change of them into any other shape could divest it, so as to give the bank or its receiver any different or more valid claim in respect to them than the bank had before the conversion."

The exact question was decided by the Supreme Court of Wisconsin in *McLeod* v. *Evans*, 66 Wis. 406, in which Cole, C. J., said:

"This is a suit in equity to recover in full from the defendant, who is an assignee of one Hodges, the proceeds of a draft of $1500. The first most serious question of law we

have to consider arises upon these facts found by the learned circuit court: The plaintiff had a draft for $1500, drawn on the Ninth National Bank of New York City. Desiring to cash this draft, he went to the bank of Mr. Hodges, in the city of Platteville, on the 30th of January, 1884, to get the money upon it. Hodges told him that he was not in funds at the time so as to cash the draft, but said he would collect it for him. Thereupon the plaintiff left with Hodges the draft for collection, and took a receipt, which reads as follows:

'PLATTEVILLE, WIS., 1–30–84.

'*By Robert E. McLeod, for collection. Currency, ——; coin, ——; checks, ——. Ninth National, New York.* $1500.

'O. F. GRISWOLD, *Cashier.*'

"Mr. Hodges told the plaintiff to return in a week, when he expected the money would be there for him. At the end of the week the plaintiff came to the bank, but was informed by Hodges that the money had not yet come from the Ninth National Bank of New York; that it took some time to make collections of this kind: whereupon the plaintiff went away and did not again return until after Hodges had suspended banking business, which was on the evening of the 8th of February, 1884. As a matter of fact, the draft was not sent by Hodges to the Ninth National Bank of New York for collection, but was sent to the National Bank of America, Chicago, with which bank Hodges did his business in that city. The Chicago bank did not for such draft send the cash to Mr. Hodges, but gave him credit for the amount on its books, and Mr. Hodges drew on that bank, after this, drafts which were cashed by the bank; and at the time Hodges suspended banking business there was nothing due him from the Chicago bank. It is admitted that on the 11th of February, 1884, Hodges assigned to the defendant all his property for the benefit of his creditors. Among the assets there was $500 cash in Hodges' bank which came to the hands of the defendant, but it does not appear that this sum was a part of the proceeds of the $1500 draft.

"Now, the first question upon this state of facts is, Does the plaintiff stand upon the same ground as the other creditors of Hodges in respect to the estate in the hands of the assignee, or has he a paramount right to be paid first out of such assets? The argument of the plaintiff's counsel in support of his superior right in equity is briefly this: That the collection of the draft was a trust assumed by Hodges; that neither the draft nor its proceeds belonged to him; that it was his plain duty to collect it and keep its proceeds separately, and deliver them to the plaintiff when demanded; that it was a gross fraud on his part not to do so; that he knew when he received the draft for collection he was in failing circumstances and largely insolvent; that the testimony indisputably shows that it was a mere pretense that he had sent the draft to New York for collection; that he really had the avails of it when the plaintiff called for his money at the end of the week, as he was directed to do, and was told that it had not come. It is said the relation between Hodges and plaintiff was not that of debtor and creditor, but that a fiduciary relation existed between them; that the proceeds of the draft were a trust fund in his hands, which did not belong to him, and which the assignee could not take as a part of his estate. Counsel says that 'the general proposition which is maintained, both at law and in equity, upon this subject is that if any property in its original state and form is covered with a trust in favor of the principal, no change of that state and form can divest it of such trust, or give the agent or trustee converting it, or those who represent him in any right (not being *bona fide* purchasers for a valuable consideration, without notice), any more valid claim in respect to it than they respectively had before such change. An abuse of a trust can confer no rights on the party abusing it, or those who claim in privity with him.' (2 Story's Eq. Jur. section 1258; Snell's Eq. 155.)

"The counsel on the other side does not challenge the correctness of this argument, or the soundness of the principle of law relied on; but he says they have no just application to the facts here, because the proceeds of the draft can

not be traced to, or identified in respect to, any property which has come to the hands of the assignee. Consequently, he says the plaintiff's claim is simply this: because he left his draft for collection with the assignor, which the latter wrongfully converted, that this gives him a lien in equity upon the general property of the wrong-doer for its value. The able counsel frankly admits if the proceeds of the draft had been found in the safe of Mr. Hodges when the assignment was made, with marks to identify the fund, that then such proceeds would not have passed to the defendant. He also concedes if the proceeds could be traced into any other property into which they had been converted, or had been mixed by Hodges with his own funds, that then the plaintiff could claim such property, or follow and reclaim the proper amount of money, as against the world. This would be so because he was the real owner, Hodges holding the proceeds only as his agent, as trust funds; or the property into which the proceeds had been converted would be impressed with the trust. But it is said none of the proceeds of that draft are in the hands of the assignee, nor is there any security bought or obtained by the draft in his possession. Still, these facts are indisputable: The Chicago bank to which Hodges sent the $1500 draft gave him credit for the amount on its books. Hodges drew against that credit in the regular course of his business as a banker, and his drafts were honored by the drawee. Presumably, Hodges obtained money for his drafts which he used in the transaction of his business or applied to the payment of his debts. So these funds which he obtained by his own drafts against the $1500 credit were substituted for the proceeds of the $1500 draft and went into his estate. The conclusion is irresistible from the facts that the proceeds of the trust property found its way into Hodges' hands, and were used by him either to pay off his debts or to increase his assets. In either case it would go to the benefit of his estate. It is not to be supposed the trust fund was dissipated and lost altogether, and did not fall into the mass of the assignor's property; and the rule in equity is well established that so long as the trust property can be traced

and followed into other property into which it has been converted, that remains subject to the trust.

"The authorities cited by plaintiff's counsel fully sustain this proposition. We do not understand that it is necessary to trace the trust fund into some specific property in order to enforce the trust. If it can be traced into the estate of the defaulting agent or trustee, this is sufficient."

In *Thompson* v. *Gloucester City Savings Institute*, 8 Atl. Rep. 97, Bird, V. C., said:

"I can see nothing in the argument respecting the impossibility of keeping the money separate when collected. The collecting bank could place such money in an envelope or other paper and preserve its identity, just as easily and as certainly as it could the note or draft collected. Nor can I see any force in the insistment that the entry by the collecting bank upon its book of the sum or sums of money collected changed the rights or relation of the parties. It would hardly be safe to say that an agent could make himself a debtor, simply as distinguished from agent, by a confusion of the money or goods of his principal, and by then giving his principal credit for their value or the amount collected. Any such doctrine would be dangerous in the extreme, and would inevitably compel the abandonment of commercial transactions by means of agents. But no difficulty whatever arises from the confusion of these moneys, any more than in every other case where the rightful owner is in pursuit of trust funds. In such case the owner need not point out the very goods or bills or coin. He does all that the law requires if he shows that the goods or bills or coin came to the hands of the defendant impressed with a trust to his knowledge. In every such case the holder must respond either in the article taken or its value."

In *Jones* v. *Kilbreth*, 31 N. E. Rep. 346, the Supreme Court of Ohio followed the above authorities, and held that where a draft in the hands of the Ohio Life Insurance and Trust

Company for collection had been seized by virtue of an attachment in favor of a creditor of that company, and applied in payment of a debt due from said company before its assignment, that the owner of the draft was entitled to payment out of the assets of the company. The court said, at page 349:

"When paper is deposited for collection the relation between the depositor and bank is that of principal and agent. If an agent for that special purpose collects or sells the paper of his principal he becomes a fiduciary, and will hold the proceeds in trust for his principal; and if the agent fails there will be no reason why his general creditors should invade such proceeds to satisfy their claims, if the principal can trace or ascertain his property in the substituted form."

Upon the authorities cited and for the reasons given we submit that the decree of the circuit court, so far as it denied complainant the relief sought in the bill, should be reversed, and that a decree should be rendered in this court requiring respondent to pay to complainant the amount of its claims in full, with interest and costs.

Respectfully submitted,

EDWARD COLSTON,
JOHN SPARHAWK,
JUDSON HARMON,
GEO. HOADLY, JR.

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Office Supreme Court U. S.
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JAMES H. McKENNEY,
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1892.

The Commercial National Bank of Pennsylvania,
Appellant.

vs. No. 76.

David Armstrong, as Receiver of the
Fidelity National Bank, of Cincinnati,
Appellee.

David Armstrong, as Receiver of the
Fidelity National Bank, of Cincinnati,
Appellant.

vs. No. 77.

The Commercial National Bank, of Pennsylvania,
Appellee.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

ARGUMENT FOR DAVID ARMSTRONG, AS RECEIVER OF THE FIDELITY NATIONAL BANK.

JOHN W. HERRON,
Counsel

Supreme Court of the United States.

THE COMMERCIAL NATIONAL BANK OF PENNSYLVANIA, Appellant.

vs.

DAVID ARMSTRONG, as Receiver of the Fidelity National Bank, Appellee.

DAVID ARMSTRONG, as Receiver of the Fidelity National Bank, Appellant.

vs.

THE COMMERCIAL NATIONAL BANK OF PENNSYLVANIA, Appellee

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

BRIEF FOR DAVID ARMSTRONG, AS RECEIVER OF THE FIDELITY NATIONAL BANK.

These cases arise out of the insolvency of the Fidelity National Bank of Cincinnati. The Commercial National Bank of Pennsylvania and the Fidelity National Bank of Cincinnati were both organized under the National Banking Act, and located, the former in Philadelphia, and the latter in Cincinnati. The latter was closed by order of the Comptroller of the Currency on the 21st day of June, 1887, and on the 27th day of June, 1887, David Armstrong was appointed receiver of its assets.

At the time of this failure, a large amount of bills receivable, consisting of checks, sight drafts, and time notes and bills, sent by the Commercial National to the Fidelity National for collection and credit, had not been accounted for by the latter, and the controversy now arises as to the proceeds of these bills receivable; whether the Commercial National Bank is entitled to a judgment that the amount so unaccounted for shall be paid in full by the re-

ceiver, or only such dividends thereon as the other creditors of the bank will receive from its assets.

The court below gave judgment against the Receiver as to a part of these proceeds from which judgment the receiver has appealed, and as to part of these assets it gave judgment for the receiver from which judgment the Commercial National Bank has appealed.

I shall first consider the questions arising on the appeal of the receiver.

On February 12th, 1887, the Fidelity National Bank addressed to the Commercial National Bank a letter of which the following is a copy:

CINCINNATI, February 12, 1887.

Commercial National Bank,
Philadelphia, Penn.

Gentlemen: Enclosed herewith we hand you our last statement, showing us to be the second bank in Ohio in deposits in the tenth month of our existence. We should be pleased to serve you, and trust you will find it to your advantage to accept one of the following propositions.

No. 1. We will collect all items at par, and allow two and one-half per cent. interest on daily balances calculated monthly. We will remit any balance you have above two thousond dollars in New York draft, as you direct, or ship currency at your cost for expressage.

No. 2. Will collect at par all points west of Pennsylvania and remit the 1st, 11th, and 21st of each month.

No. 3. We will collect at par Ohio, Indiana and Kentucky items, and remit balance every Monday by draft on New York. We do not charge for exchange on propositions Nos. 1, 2 and 3.

No. 4. Will collect Cincinnati items, and remit daily at 40 cents per thousand, or 20 cents for $500.00 or less.

National Banks, not in a reserve city, can count all they have with us as a reserve. Your early reply will oblige,

Yours,

E. L. HARPER, V. P."

To this the Commercial National Bank replied under the date of February 18th, as follows:

PHILADELPHIA, February 18, 1887.

To Fidelity National Bank,
Cincinnati.

* * * * *

We accept your proposition No. 2 in your letter of the 12th inst., and

I enclose, For collection—

FOR CREDIT.	
$ 7 08	Frankfort, Ind.
5 20	Bay City.
10	Memphis.
18	St. Paul.
111 40	Nashville.
164 90	N. O.
5 20	Alr.
689 84	Galveston.
$,1011 62	N. C.
995 93	5 N. O.
$2,007 55	

From time to time the Commercial National Bank sent large amounts of paper to the Fidelity National in letters similar to the above. In all of these letters the cash items, checks and sight drafts were stated separately from time paper.

The amount of the cash items was added up in each letter separate from the time items. Each piece of paper was endorsed by the Commercial National Bank, before being forwarded, with a rubber stamp furnished to it by the Fidelity in the following words: "Pay Fidelity National Bank Cincinnati, or Order, for collection for Commercial National Bank, Pennsylvania", and signed by the proper officer of the bank. It is admitted that as to all cash items, so forwarded, they were at once charged to the Fidelity National by the Commercial National on the same day on which they were so forwarded. The time paper was not then so charged, nor until advice of payment was received. It is also admitted that the Fidelity National on receiving this paper at once credited the cash items so received on its books to the Com-

mercial National. It made no difference whether such paper was on parties in Cincinnati, or where it was payable. It was at once credited. The time paper was not credited until paid. Such of the paper as was not payable in Cincinnati, was immediately forwarded by the Fidelity National to its various correspondents for collection, and then immediately charged to such correspondents.

It is admitted, that on the 1st, 11th and 21st of each month, up to and including June 11th, the Fidelity National Bank forwarded to the Commercial National Bank a statement of all items credited to it and remitted the balance due as shown by such statement. It is claimed by counsel on the other side that such statements and remittances only included items at that time actually collected. But I think the testimoney clearly shows, as I will state it hereafter, that no difference was made as to whether such items had been collected or not. All items received and credited at the dates named in the statements were remitted for. It is also claimed that there was no intention on the part of the Commercial National Bank by these entries charging the cash items to the Fidelity to pass the title to the paper; and accordingly, the officers of that bank testify that they had no such intention. At the same time Mr. Graham, the officer so testifying, and the cashier of the Commercial National, testifies that it was intended and understood in charging the cash items to the Fidelity National Bank that the latter thereby became indebted to the Commercial National in so much money. And, again, that he understood that in debiting the Fidelity National Bank in this manner, it became *absolutely* indebted to the Commercial National (see pp. 35 and 36 printed record).

At the time of the failure of the Fidelity, most of the paper in controversy had been collected either by the Fidelity or its correspondents. It had been credited on the books of the Fidelity to the Commercial National, and had been charged to the account of the correspondents who had collected it, and those correspondents had credited it on their books to the Fidelity. The accounts with these correspondents were almost universally reciprocal accounts, and remittances were never made specifically of items collected by them. The balances were settled as requested by one or the other,

and monthly statements of account rendered. In some cases these credits caused the collecting bank to be indebted to the Fidelity, and in such cases after the failure and the settlement of the reciprocal account, the balance due was remitted to the receiver. In all such cases the court below gave judgment in favor of the Commercial National Bank. In other cases the Fidelity National was indebted to the collecting bank, and in such cases no remittances have been made to the receiver, the credits, reducing the amount of that indebtedness. In all such cases the court below gave judgment in favor of the receiver.

I.

The first question to be settled in this case is as to the character of the relations between the parties, as to the cash items sent to the Fidelity National; whether it was that of debtor and creditor, or of principal and agent only; or whether the relation was at one time of the one character and at a subsequent time of the other character.

It will be noticed that in every letter in which such paper was enclosed, the direction as to cash items is, "FOR CREDIT", as to time items "FOR COLLECTION". Also that the Commercial National Bank at the time of forwarding charged the cash items on its books to the Fidelity, but did not so charge the time paper. The reason for this as given by the cashier (printed page 35) was, "We could never have settled our work for the day unless it was so charged. If we credited our depositors with the amount of the deposit, of course, we have to charge it to the bank to whom we send such items. Upon the principle of book-keeping every credit must have a debit, and *vice versa*".

I submit that the same reason would apply to time paper when discounted for and credited to a depositor and sent to a bank for collection. It should on the same principle of book-keeping have been charged to the Fidelity National when it was sent to it for collection, but this was not done. After being forwarded for collection, it remained in the same account as before until advised of its payment; so might cash items have occupied this position until actually paid. I submit that the better

reason is that cash items were regarded and treated by both banks as cash. The very explanation given by the cashier has its foundation in the fact that such paper was credited as cash to the depositors, and the bank accordingly treated it as cash in forwarding it to the Fidelity. Again, no notice of payment was expected in case of cash items as in the case of time paper (printed page 31). Why? Simply and only because cash items when forwarded were charged to the Fidelity National Bank, it thereby became indebted to the Commercial National Bank, and the paper was thereafter treated as the property of the Fidelity, as to the payment of which the former would only he interested when specially advised of its non-payment and protest. But it is claimed by the other side that this credit being subject to be charged back if not paid, was therefore a conditional credit only, to become absolute when actually paid. But this does not follow. The right to charge back if not paid existed in the case of an absolute credit. The Commercial National Bank was the endorser of the paper. If not paid it would be protested, and the latter bank thereby became liable on its endorsement, and the Fidelity National would have the right to charge it back to the account of that bank.

It was regarded in this light by the Commercial National Bank. Mr. Graham testifies that by this charge of cash items to the Fidelity Bank, the latter became *absolutely* indebted to the Commercial National; and his counsel were unable to get any modification from him of his testimony. To the question put by his own counsel, whether this indebtedness of the Fidelity Bank to which he had testified was the same or different from that of a bank with whom he kept a regular deposit account, he said, "No, sir".

Great stress is laid by counsel, as well as by the court in deciding the case below, upon the correspondence between the parties which took place the latter part of May. On May 25th, 1887, the Commercial Bank wrote as follows:

"Cashier of the Fidelity National Bank,

Cincinnati, Ohio.

Dear Sir: We don't wish to complain, but would like to understand why your remittance to us of May 21st only included items

sent you up to May 14th, and received by you on the 16th. We have to explain these things to our depositors, and wish to act intelligently upon the subject.

Very truly yours,

E. P. GRAHAM, C."

Across the face of this letter the Fidelity sent the following reply.

"Gentlemen: We collect at par and include in our remittances everything collected to date.

E. L. HARPER, V. P."

This letter from the Commercial National clearly asserted a claim that the Fidelity under the contract should remit for all paper received by it to the date of receiving such remittance. As the paper sent was payable in a great variety of places throughout the west, advices of the collection of all of them could not have been received by the Fidelity as the Commercial required it to remit. But the testimony shows that cash items were remitted for without reference to their actual payment. Mr. Bradley testifies (pages 75 to 79 printed page) that the statements sent to the Commercial Bank were made out personally by him, and as to the manner in which they were made up. He explains that he had statements prepared in advance; that from day to day as the mail brought collections, he entered on this statement the cash items received from the Commercial National, the same as they were credited to that bank on the books of the Fidelity; and these statements with remittances were sent to the bank on the 1st, 11th and 21st of each month. These entries were not made from collections of the paper, but as the paper was received from the Commercial bank. In every statement, sent (of which copies are attached to the deposition pp. 57 to 61), the credits of the receipts of each day are entered together, referring to the letter in which they were received. Had the credits been made from collections merely, such an entry would have been impossible. The statement contained in the answer of Harper to the letter of May 25th, either refers exclusively to time items received from the Commercial National Bank for collection, or was not in accordance with the facts. The statements themselves show such was not the case. The testimony of the men who actually attended to the

business show that Mr. Harper was mistaken if he referred to cash items. It would probably show, and such was most probably the fact, that by this time the Fidelity National Bank was becoming embarrased and instead of remitting promptly was holding back some days' remittances in the statements sent. But such withholding was regulated by fixed days, and was not governed by the fact whether the paper was collected or not. It was not the fact of collection that determined whether the paper should appear on that statement, but the fact that it was a cash item received from that bank. And, therefore, the fact that all the paper received at the date when the remittances were to have been made were not remitted for, does not change the character of the relation between the parties.

But, it is claimed, that the restrictive endorsement upon this paper specifies the purpose for which it was sent and that the legal result from that endorsement can not be varied by parol testimony or the custom of banks, and

White vs. *National Bank*, 120 U. S. 660–1,

is cited to this effect.

It is true that the contract provided only for collection, and not that cash items should be credited at once; and it is also true, that the restrictive endorsement named was made in every case; but it is also true, that in the very letter in which the proposition of the Fidelity is accepted, remittances of cash items were made for credit and were at once charged to the Fidelity on the books of the Commercial National as cash. That letter had two head lines; one for collection, the other for credit. And every one of the cash items was placed under the heading "FOR CREDIT". This is part of the contract, and the whole contract must be construed together, and it follows from the whole correspondence that the cash items were sent to the Fidelity National as so much money, to be remitted for on the days named in the proposition of the Fidelity. The whole course of dealing between the two banks shows that each party treated the cash items as cash. All the entries on their books and their modes of remitting were framed on that basis.

II.

But the question as to the title of cash items just considered, is of very little practical importance in this case. A very small amount of such paper was collected after the failure of the Fidelity National Bank. The items of that class not then paid were returned by the receiver to the Commercial National after the failure, except one item of $49.31 which is reported by the Master as paid to the receiver June 22nd, (p. 151), and three items amounting to $309.68, collected by correspondents (p. 156). The other items for which suit was brought, were actually collected prior to the failure and credited by the correspondents on their books to the Fidelity National Bank, having already been credited by the latter to the Commercial National.

One other fact is very important in this connection. Exhibit 29, to Cashier Graham's deposition, (p. 61) is the last statement rendered by the Fidelity National Bank. It is not dated, but is evidently the one contracted to be sent June 11th. It contains credits to the Commercial National of all cash items received, and other collections made by the Fidelity National up to and including June 8th. The balance of $17,110.95 was remitted with that statement. The next statement and remittance would be due June 21st, but on the morning of that day the Comptroller of the Currency took possession of the Fidelity National Bank.

The question, then, is what was the relation between the two banks after the collection of this paper and the time when it was to be remitted for.

The proposition from the Fidelity bank was:

"No. 2. Will collect at par all points west of Pennsylvania, and remit the 1st, 11th and 21st of each month".

The answer was,

"We accept your proposition No. 2 in your letter of the 12th instant, and enclose for credit".

It will be noticed that the Fidelity National agreed to take all paper west of Philadelphia, and collect and credit it at par. No deduction was to be made for the expense of forwarding that paper

to the proper points for collection, nor for any charge that its correspondents might make for the actual collection, and for exchange in remitting the proceeds. The face of the paper wherever it might be payable was to be remitted to the Commercial National Bank. It made no difference, either, as to the time when in fact it should be paid. It was made an indebtedness of the Fidelity National Bank from the date of credit, and must be remitted for at the stated times. Again, it will be noticed that the Fidelity National does not agree to collect and remit the proceeds specifically of each collection. That was not the language of the agreement, nor was it the intention of the parties. The language is to collect and "remit the 1st, 11th and 21st of each month", *i. e.* to remit the balances on those dates due from the Fidelity National to the Commercial National, and every statement attached to the deposition of Mr. Graham shows a current account between the days stated of credits and debits, and the balance only as shown by the statements of accounts remitted for.

What was to be done with the proceeds of the collections so made, between the dates of collection and the dates for remittances? The use and control of such collections was the only compensation which the Fidelity National Bank could receive for collecting the paper and crediting it at par. Both parties were national banks, and they were acting with the knowledge of each as to the powers of the other, that it had only such incidental powers as were necessary to carry on the business of banking, and that all acts done by each, and the mode of conducting business with each other should be such as are usually adopted by banks. The word "credit" has a definite meaning when used between bankers, and entirely excludes any idea that the parties did not wish to have an account one with the other, or that the Fidelity National Bank should not have the right to use the money and give the credit in its place.

As is said by Judge Wallace in 33 Fed. Rep., 411,

"The custom of bankers to credit customers with the proceeds of paper left for collection, when the paper has been collected, is universally recognized, *and customers and bankers are presumed to deal and contract together in view of this usage.*"

Banks do not collect and keep separate the proceeds of such collections. They use them in the business of banking. When collected by the Fidelity or its correspondents, they were used as all deposits are. And as the Fidelity Bank in the present case had the right to use them until the time for remitting them arrived, under the agreement between them, it had the right to mingle such proceeds with the cash of the bank, to pay checks of its depositors indiscriminately, to use them in the discounting of paper or bills of exchange, in the purchase of bonds, or in any other manner usual or proper in the business of banking. Had the Commercial National on the 20th of June, 1887, demanded of the Fidelity National the proceeds of collections made after the 11th, the Fidelity National could have refused to pay them over, and to have answered that the control and use of these proceeds belonged to it until the 21st, as compensation for collecting the same, and crediting them at par. It had agreed on a certain future day to remit the balance of account to the Commercial National Bank, but until that time such proceeds were the property of the bank. During the intervening time, the Fidelity was the debtor of the Commercial in the amount which it had so received, but upon an account not then due, but to become due and payable at a fixed time. It was the same as if the Fidelity at the time of each collection had sent to the Commercial National its promissory note for the amount, payable on the day when it had agreed to remit.

I can come, therefore, to no other conclusion than that from the date of collection to the date for remitting, the only relation between the parties as to such proceeds was that of debtor and creditor.

Nor can I agree that any trust whatever in the sense claimed by the counsel on the other side, attached to these proceeds after collection. It is true that every bank is in one sense a trustee for every one who entrusts his money with it. Every depositor gives his money to the bank on the implied agreement that the bank will pay his checks whenever presented. Deposits are generally payable on demand, and not, as in the present case, at a future day. A depositor may generally check out his deposit on the

same day on which it is made, or on the next day, or whenever he pleases; and a much stronger trust attaches to the funds of an ordinary depositor than to those in the present case.

Neither is there any fraud in the present case, unless it arises form the fact of the Fidelity National attempting to act as a bank at all. It credited the cash items as received; it remitted the balances of the account on the days named in its proposition; it remitted on the 11th day of June all that was then due to the Commercial National Bank, and on the 21st day of June, when its next remittance should have been made, the Government had placed its hands upon the assets, and the bank was powerless. The bank had made no default in its contract up to the time when the Comptroller took possession. The Commercial National had made no demand which had not been complied with, nor had it made any complaint, except that contained in its letter of May 25th, and after receiving the answer to that letter, it had continued to forward its paper the same as before,

The Commercial National Bank undoubtedly thought that it had made an excellent bargain when it accepted the proposition of the Fidelity. It was thereby enabled without loss or expense to collect its commercial paper throughout the Western States. All that it gave for this benefit was the use of the collections by the collecting bank for certain days. Having received the benefit of that contract, it must submit to the other legal results following from it. It must submit to being considered a creditor from the dates of the collection to the dates provided for the remittance.

Upon these facts, and the legal conclusions from the facts, we claim that the Fidelity National Bank, even if it were merely the agent of the Commercial National to collect the paper sent in the manner stated, and which includes nearly all the paper in controversy in this case, that the moment the paper was collected by the Fidelity Bank it became indebted to the Commercial National with an agreement to remit the balance of the account on the next one of the three days named in the proposition.

III.

The next question that arises in this case is as to the time when this paper is to be regarded as collected.

I have claimed that from the manner in which it was sent and received, being sent for credit, and being at the time charged to the Fidelity National, and being credited by the Fidelity as it was received, that amounted, as between the two banks, to a collection. The paper became the property of the Fidelity National with the endorsement on it of the Commercial National, which endorsement enabled the Fidelity National to hold the Commercial National for repayment, if it was not paid and properly protested. I, however, regard this as in the present case immaterial. It was certainly collected, when the payer of it paid it to the bank which held it, which bank had received it from the Fidelity National for collection. And if such payment was made before the failure of the Fidelity National, as was the case as to almost all the paper in question, it was a collection of the paper by the Fidelity National. The report of the master gives a list of the paper so paid; and the dates of payment. These lists appear on pages 152–3–4–5–6 of the printed record. As stated before, the last statement of account was forwarded by the Fidelity on June 11th, and included all items received to June 8th, inclusive. The first credits not included in that statement and remitted for were made June 9th, and other collections were made on each succeeding day until the 20th, the day preceding the closing of the bank. I claim that the collection by the correspondent banks was a collection by the Fidelity Bank. The collecting bank was the agent of the Fidelity, and not of the Commercial National. And, therefore, these payments are to be regarded precisely as if on those days these sums had been paid directly to the Fidelity National Bank. They had all been credited to the Commercial National Bank before the failure; they had been charged before the failure to the corresponding banks, and credited by the corresponding banks to the Fidelity National. No notice of the payment was necessary or usual. Mr. Graham testifies on page 31, that no notice of the payment of cash

items was ever received. Everything had been then done that was usual, or could be done in reference to such paper prior to the failure of the Fidelity National Bank, to consummate the collection, and to make the Fidelity National absolutely responsible to the Commercial National for this paper.

If, then, this paper had been collected by the Fidelity National Bank prior to its failure, and the Fidelity had become the debtor of the Commercial National for the amount so collected, it is unjust and contrary to the intent of the National Banking Act to compel the receiver to pay this one creditor in full in advance of all other creditors. The National Banking Act requires the assets of an insolvent National Bank to be distributed *pro rata* among all the creditors. It makes no difference as to how the indebtedness arises, if it is a debt it must fare the same as all other debts.

IV.

In reviewing the authorities upon these several questions, I will first refer to those on the question whether the collection under the circumstances of the present case by the correspondent bank was or not a collection by the Fidelity.

I will first refer to the case of

Reeves, Stephens, & Co. vs. *The State Bank of Ohio,* 8 O. S. R., 464, because that case has been cited with approval by this court.

The facts in that case are almost precisely like those in the present one. Reeves, Stephens, & Co. sent for collection to the Commercial Bank, of Toledo, a draft for five hundred dollars on D. H. Buckingham & Co., of New York; the Commercial Bank of Toledo sent the draft for collection to the American Exchange Bank of New York. It was paid to that bank November 21, 1854, and credited by it to the Commercial Bank of Toledo. On November 27, 1854, the Commercial Bank of Toledo became insolvent. The American Exchange Bank at the time of this failure was indebted to the Commercial Bank of Toledo not only for the proceeds of the collection of the $500 draft, but in a large sum for

other collections, all of which it paid over to the State Bank of Ohio, whose duty it was under the laws of Ohio to wind up the affairs of the insolvent bank. Reeves, Stephens & Co. sued to recover the proceeds of the draft.

It was held:

"Such correspondent is the agent of the bank here, and not the sub-agent of the owner of the draft. And payment to the agent is payment to the bank, unless there is some agreement or authority between the owner and the bank beyond the mere fact of the draft being received for collection.

2. If before a draft is collected the bank here becomes insolvent, its agency may be revoked, and the agent of the bank made by notice or otherwise the agent of the owner of the draft, and chargeable to the owner with the proceeds of the draft after it is collected.

3. But if the bank here becomes insolvent after the draft is collected by the agent, and if before such insolvency various sums are collected by the agent, and drafts forwarded to him for eollection, and various sums are paid to the bank on such collections before the insolvency, and after the insolvency a part of the funds remaining from such collections in the hands of the agent is paid over to the assignee of the insolvent bank, the owner of such draft has no such specific lien or claim upon the funds in the hands of the assignee as to give him a preference over creditors of the insolvent bank."

The Court in this case went into a careful and well-considered review of the authorities on this question, and as a conclusion stated on page 482.

"On the whole, looking at the question in the light of principle, and of what seems to be a sound legal policy we prefer to adopt the doctrine of the courts of England and New York as now established."

And, again, on page 483:

"And, moreover, whatever balances existed on the books of that bank in favor of the Commercial Bank of Toledo, the agent of the plaintiff were indistinguishably mingled with the assets of the latter, and the plaintiffs could have had no claims against it at all

distinguishable from those of a general creditor of the Commercial Bank of Toledo. It can hardly be said that the proceeds of the plaintiffs' bill were paid over by the American Exchange Bank to the defendant; the most that *can* be said is that the proceeds of the plaintiffs' bill formed a somewhat remote and inconsiderable element in a general account between the Commercial Bank of Toledo and the American Exchange Bank, an indistinguishable portion of a balance of which general account was, after a course of subsequent dealings between said banks, paid over to the defendant, and under the circumstances of the case, we think the American Exchange Bank had a right to make the payment, and the defendant had a right to receive it."

The case of

Bank vs. *Butler*, 44 O. S., 519,

has been claimed by some to modify this decision. But, on the contrary it quotes the point decided in that case above quoted with approval. The Court held that the notary in that case, being a public officer, was from that fact the agent of the owner of the paper.

In the case of

Hoover, Asignee, vs. *Wise et al*, 91 U. S. 308

the question arose as to whether an attorney to whom a claim was sent for collection by a collecting agency was the agent of the collecting agency, or of the owners of the paper who placed it in the hands of such agency. This court, on page 311, after stating the difficulties in the case before them, and the different decisions which had been made by the courts in different States, says:

"Without attempting to harmonize or to classify the conflicting authorities, we think the case before us falls within a particular range of decision in which the preponderance is undoubted."

"Among these are the following: In *Reeves* vs. *The State Bank of Ohio*, 8 O. S., 465, the case was this" &c.

This court then proceeds to state the facts of that case, and the decision of the court upon it with approval.

I regard this as fully confirming by this court, the doctrine laid down by the Ohio case, and which fully sustains the claim I now make.

This same question may be considered in another aspect. Suppose either of these correspondent banks had failed, having collected the paper, and credited the proceeds to the Fidelity Bank, but had failed to remit such proceeds. Would not the Commercial National Bank in that case have looked for the payment of the amount collected to the Fidelity National Bank? And would not the Fidelity National Bank have been liable to the Commercial National for the money so collected by its correspondents, however careful it may have been in the selection of its sub-agents?

Upon this point, in the same case of *Hoover, assignee* vs. *Wise et al*, just referred to, this Court has also expressed its opinion. On page 312, after citing the case of *Mackay* vs. *Ramsay*, 9 Clark & Fin, 818, this Court quotes the following language from that case with approval:

"To solve the question it is not necessary to go deeper than to refer to the maxim '*qui facit per alium, facit per se*'. R. & Co. agreed for a consideration to apply for payment of the bill. They necessarily employed agents for this purpose who received the amount. Their receipt was in law a receipt by them and subjected them to all the consequences. The appellant with whom they so agreed cannot have anything to do with those whom they so employed, or with the state of accounts between different parties engaged in its agency. The banker thus receiving the draft from its owner, was held liable for the act of the person employed by him, although free from negligence or fraud."

And, again,

"These cases show that where a bank as a collection agency receives a note for the purposes of collection, that its position is that of an independent contractor, and that 'the instruments employed by such bank in the business contemplated are its agents and not the sub-agents of the owner of the note."

And, again, "There are, doubtless, cases to be found hold-

ing to the contrary of these views ; but the principle they decide, is, nevertheless, well established".

It would seem to be a waste of time to consider this matter further before this Court. The doctrine must be considered as settled by this Court, that the collection of the collecting bank, was a collection by the Fidelity National, and that the case is to be considered the same as if the paper had actually been collected by the Fidelity National Bank.

At the same time it may not be considered improper for me to refer to other cases in which the same doctrine has been settled by other courts.

In the case of the

First National Bank of Crown Point vs. *First National Bank of Richmond*, 76 Ind., 563,

the plaintiff National Bank owned a check for $5,000.00 on the Richmond National Bank of Richmond, Indiana; it sent this check to the Cook County National Bank of Chicago, with a restrictive endorsement as in the case now before the Court. The Cook County Bank sent, it for collection to the First National Bank of Richmond for collection and credit. The Cook County Bank failed on the same day on which the draft was forwarded. The First National Bank collected the check the day after the failure of the Cook County Bank, and credited it to the Cook County Bank ; held : That the transaction did not make B. the debtor of A. before the collection of the check, nor did it deprive A. of its right to the check or its proceeds before the collection of B.

Held, also : That the direction in the letter of Cashier of A. to B. was an authority to mingle the funds with the general funds of the bank when collected, whereby A. would have become the general creditor thereof, instead of being entitled to the general funds. But the insolvency and suspension of B. operated as a revocation of such authority.

A clear distinction is made by the authorities as to collections made by a correspondent bank between cases where such collections were made before and those where they were made after the insolvency of the agent for collection. It has been frequently held that where commercial paper is sent to a bank fo

collection, and such bank becomes insolvent before the collection of the paper, the owner may reclaim it; that no title passed to the bank to which it was so sent. And if that bank has forwarded to another bank for collection, and the latter bank collected after the insolvency of the one from which it received it, such insolvency revokes the authority of the sub-agent. And if thereafter the latter makes the collection, it does so for the original owner. In almost every case cited on the other side where judgment has been given by the Court in favor of the original owner against the correspondent bank, the collection was made after the insolvency of the agent for collection. As a very late illustration of this difference, I refer to the case of

National Butchers' and Drovers' Bank vs. *Hubbell*, 117 N. Y., 384,

cited in the brief of the counsel on the other side.

The relations between the parties in that case, both being bankers, were almost exactly the same as in the present case. Commercial paper was forwarded by one bank to the other, endorsed for collection for account of the sender. The collecting bank agreed on Thursday of each week to forward to its principal the balance of account. At the date of failure part of this paper had been collected, and part had not been collected. As to the latter, the plaintiff obtained a judgment against the receiver, but as to the former, the Court, on page 396 says:

"As to the moneys received by the firm in payment of checks and drafts sent to it for collection by the plaintiff, and by the firm paid out before the assignment, and in the usual course of business, in payment of the debts of the firm, we do not see that the plaintiff occupies any different position in that regard towards the firm than any other creditor. As the firm was to remit but once a week, of course it was not expected that the identical moneys received by it in payment of paper sent to it for collection were to be sent to the plaintiff. The firm by the arrangement had the right to retain the money, and remit weekly, and, of course, from one week to another it had the right to use the money, and the plaintiff relied on the credit of the firm for such time as it had the right to retain the money."

V.

The important question in the present case is the character of the relation between the parties after the collection of the paper in controversy, and before the time specified in the agreement on which the proceeds were to be remitted. Admitting that the paper was sent for collection merely, and that until the collection was made the relation of principal and agent existed, was that relation continued after the collection of the paper and the credit of the proceeds in account on the books of the several parties?

There can be no doubt, I think, that as a general rule money paid into a bank becomes the property of the bank, and that the relation of debtor and creditor immediately arises between the bank and the party so paying it in. In

Foley vs. *Hill*, 2 H. of L., 35, it is said: "Money when paid into a bank ceases altogether to be the money of the principal."

And in

Daniels on Negotiable Instruments, Section 334,

"As soon as the bank collects the money it becomes the debtor of the depositor of the instrument for collection."

And in

1st Morse on Banking, 3rd, ed., 248.

"After the collection had been made, the bank becomes a a simple contract debtor for the amount, less the commission, if any has been charged. If the party for whom the collection was made is a regular depositor, the sum will be properly placed to his credit upon his daily deposit account, unless a peculiar reason or special instructions demand some different course of dealing. *If the party has no deposit account, the bank simply owes him the amount on demand.*"

And again,

"Proceeds received after the bank became insolvent are held in trust and may be recovered in full. But if the proceeds are collected and credited before insolvency the owner can not recover in preference to the other creditors."

See also Section 289.

In *Smeedes* vs. *Utica Bank*, 20 Johnson, 379, the court says:

"Incident to the business of banking is the receiving of notes from its customers for collection. There is great dissimilarity between the duties and obligations of an agent towards its principal, and the duties of such bankers in reference to moneys collected for its customers. It is the duty of an agent to pay over the money collected to its principal; whereas there is an implied understanding that a banker may use the money of his customers including that collected for them, as well as that deposited.

And in *Jockusch* vs. *Towsey*, 51 Texas, 129:

"The collection of notes, &c, is within the ordinary business of banks. After the collection is made the bank becomes a simple contract debtor for the amount."

In the present case, however, the learned Judge who decided the case below, held that the relation of principal and agent continued as to the proceeds after collection. To correctly understand the ground on which the case was decided, I quote from Judge Jackson's opinion on this point, as found in 39th Fed. Rep. pp. 690–1.

"The contract with a party taken in connection with the special endorsement agreed upon by both renders it clear both upon principle and authority that so far as concerns the paper in question the relation between complainant and the Fidelity National Bank was not that of creditor and debtor, but that of principal and agent.

"The next question presented is, did they occupy any other or different relation to each other, as to the proceeds of such paper after actual collection thereof by the agent bank or by its sub-agent? The agency relation being established as to the paper, the money received thereon should stand upon the same footing and be held in the same capacity by the collecting bank. The relation of principal and agent as to the proceeds of such paper could not be changed to that of creditor and debtor without the consent or concurrence express or implied of both parties.

"The agent certainly could not, by an act of his own, divest himself of his fiduciary character in respect to the proceeds of paper he had collected as agent. His method of keeping his

accounts with his principal would not terminate his agency relations, or convert him into a mere debtor without the assent, express or implied, of his principal. In the present case there was no intention, express or fairly to be implied, that the parties considered the proceeds of the paper as standing upon a different footing from the paper itself. The accounts which they mutually kept of their business, were properly principal and agency accounts as distinguished from creditor and debtor accounts. They were kept in the usual way banks keep their collection accounts. It was not the understanding of either (certainly not of complainant) that any creditor or debtor relation, as such, was to be created in respect to the proceeds of paper sent out for collection. The first proposition submitted by the Fidelity National Bank perhaps contemplated a creditor and debtor connection. But the second, third and fourth, upon their face did not. Aside from the contract embodied in the accepted proposition, the plain meaning of the special endorsement used is that the Fidelity National Bank was to collect the paper and receive the proceeds 'for account' of the complainant, and such proceeds were to be remitted on certain days next after collection. We think it clear that the principal and agency relation created as to the paper continued as to the proceeds thereof."

What are the facts on which it is claimed that the relation of debtor and creditor continued after collection? They are that the paper was sent for collection only, that it was sent for account of the sender, that the proceeds were to be remitted at stated times, that there was only a collection account between the parties. There is not another fact shown in the case, or even claimed to be shown, as a basis for the continuance of the principal and agency relation after the collection. Every one of these facts exists to a greater or less extent in every case between banks where commercial paper is collected by one for the other. It is endorsed for collection only and for account of the sender. It is to be remitted for, either in each case specifically, or generally as soon as collected, or at stated times after collection. There is frequently a collection account merely between said parties, and

yet it has almost universally been held that after collection the relation between the parties is that of creditor and debtor.

I refer next to the case of the

Marine Bank vs. *The Fulton Bank*, decided by this court, and reported in 2 Wall., 256.

In that case the Fulton Bank sent to the Marine Bank for collection two notes due May 24th, 1861. The currency of Illinois being at that time in a disorganized state, the Marine Bank advised its customers that it could not remit regularly, but would be compelled to place all funds received in payment for collections to the credit of its correspondents in such currency as was received at Chicago to be drawn for only in like bills. On May 1st, the Fulton Bank directed it to hold the available collections subject to its order, and to advise amounts collected.

The Marine Bank passed to the credit of the Fulton Bank the amounts collected. Justice Miller, in deciding this case, says, page 254:

"The Chicago Bank was undoubtedly the agent of the Fulton Bank up to and including the receipt of the money from the maker of the note".

And, on page 257:

"If we are correct in these views it would seem that the relation of principal and agent was changed the moment the money received was placed in the general funds of the bank, and the plaintiff credited on its books with the amount".

Here the relations of the parties at the outset were the same as in the present case. The relation of the parties, however, was changed simply from the fact that the collector was a banker who was entitled to collect and use the proceeds in business.

In the case of

The First National Bank of Circleville, 33 Fed. Rep., 408, Judge Wallace held:

"Plantiff sent to F. Bank a draft endorsed 'for collection', accompanied with instructions "to collect and credit proceeds". F. Bank sent the draft to defendant, and the latter collected it, received the proceeds, and credited them to the F. Bank in accordance with the usual course of business between the F. Bank and

the defendant, and notified the F. Bank of the credit. The F. Bank suspended business before crediting plaintiff with the proceeds, but after they had been collected, and after it had received notice of the credit".

2. Held, further, "That the relation of principal and agent continued between the plaintiff and the F. Bank so long as the latter did not assume the relation of primary debtor to the plaintiff for the proceeds of the draft. That the plaintiff not having been credited with the proceeds by the F. Bank, the relation between them remains that of principal and agent, and not debtor and creditor. And that the F. Bank not having credited the plaintiff with the proceeds while it was going concern, could not by doing so subsequently change the existing relation".

The court in deciding the case, on page 411, says:

"When the paper consists of sight drafts or checks, and the credit is given when the paper is delivered as upon a deposit of money, the transaction may be equivalant to a discount of the paper, or the delivery may be treated as a deposit of money, in which case, of course, the title of the paper passes to the banker. These are exceptional transactions, however, in which the rights and obligations of the parties are to be ascertained from the special facts of each case, and they furnish no rule which can be applied to a case like the present where the credit is not given by the banker until the collection of the paper.

"If the Fidelity Bank had credited the plaintiff with the proceeds of the draft while it was a going concern, notwithstanding it had not actually received the proceeds, the question would arise whether the plaintiff would not be concluded, and its position fixed as that of a creditor instead of a principal. In a case like that it might be urged with much reason that when the banker had through his sub-agent collected the paper entrusted to him and given credit for the amount to the customer, he has done just what both parties contemplated should be done, and, hence, has properly substituted himself a debtor in place of an agent."

In the case at bar, the Fidelety National Bank had credited the Commercial National with the proceeds of the paper in controversy. And even if the claim made by the counsel on the

other side is correct that this credit being subject to payment was conditional only, the paper having been paid, the credit had become absolute, and the Fidelity National Bank had become as clearly indebted to the Commercial National for such collection as if the proceeds had been in its own vault. And if the collecting bank had failed before remitting, the Fidelity National Bank would have been held responsible for such proceeds.

The case of

People vs. *City Bank of Rochester*, 93 N. Y., 582.

is precisely like the present one. The syllabus is:

"By an arrangement between two banks each acting as collecting agent for, and keeping a running account with the other, crediting upon the day the collections made for it, and charging the paper sent for collection; a balance being struck once a week, and the bank found indebted, remitted the balance due. The avails of collections were not kept separate or distinguished in any way from the other funds of the bank. One of the banks having failed, owing a balance on such account, held that the relation between the banks was simply that of debtor and creditor, that the creditor acquired no lien upon any specific funds, and was not entitled to preference over other creditors.

And on page 584, the court says:

"Each sum collected as it came in became the property of the collecting bank, who simply had to account for it to the other on the next settling day. It was under no obligations to pay over each specific account received. Whether there would be anything to pay over depended upon the condition in which the account should be when the settling day arrived. This was the course of dealing agreed upon, and followed between the parties for a long period, and it established between them the relation of debtor and creditor in respect to these collections."

In *Bank* vs. *Russell*, 2 Dill., 215.

Notes were sent to a bank for collection only. They were collected by the bank, and a draft for the amount on St. Louis forwarded to the owner. Before the draft reached the bank on which it was drawn, the collecting bank failed. And the owner sued the assignee of the collecting bank and the St. Louis Bank.

claiming to impress a trust upon the funds in the hands of the assignee, or on the funds in the St. Louis Bank on which the draft was drawn. Judge Dillon held that there was no trust on either fund in favor of the owner of the paper, and said:

"I am of opinion that upon the statements of the bill, that this principle does not apply, and that the relation between the bankrupt and the plaintiff at the time of the bankruptcy was simply the relation of debtor and creditor."

In the *Marine Bank of Chicago* vs. *Rushmore, et al.* 28 Ill., 463.

It was held:

"Where a bank undertakes to collect for a customer, and does so, and upon the receipt of the funds mixes them with the general funds of the bank, the money collected becomes a deposit to the credit of the customer like other general deposits, to be governed by the same rule."

And, again, "the bailment terminated when the certificates were collected, and the appellees were credited on the books of the bank with the proceeds, the bank mingling them with their own funds."

And in *Tinkum & Co.* vs. *Duckworth*, 31 Ill., 523, the court says:

"When this money was collected and placed to the credit of the plaintiff, the only relation between the parties was that of debtor and creditor,"

In re Bank of Madison, 5 Biss., 519, the court held:

"That case shows that there is an implied understanding that the money received from collections is to go on deposit in the bank. And in the absence of an agreement that it was not to be passed to the account of the dealer, courts should give to such understanding the force of a contract that it was to be deposited in the ordinary way, and that it was to be drawn out by check like other money."

Planters' Bank vs. *Union Bank*, 16, Wall., 501, this court held:

"We do not controvert the position that generally a bank becomes a debtor to its depositors by its receipt of money depos-

ited by him, and that money paid into a bank ceases to be the money of the depositor and becomes the money of the bank, which it may use, returning an equivalent when demanded, by paying a similar sum to that deposited. Such is undoubtedly the nature of the contract between a depositor and his banker. So, also, a collecting bank ordinarily becomes the owner of moneys collected by it for its correspondents, and consequently a debtor for the amount collected, under obligation to pay on demand, not the identical money received, but a sum equal in legal value."

Manufacturers' Bank vs. *Continental Bank*, 148 Mass., 553.

The facts in this case are very similar to that now before the court, and resulted from the failure of the same Fidelity National Bank. The latter agreed to collect commercial paper for the Continental Bank at par and to remit weekly to the Manufacturers' Bank. It was endorsed precisely in the same form as the paper sent by the Commercial National, and the arrangement as to the business was almost precisely the same as with that bank. The draft in controversy was not paid until June 22nd, after the failure of the Fidelity, and the court held that the title to it did not pass, but that the bank collecting it was liable to the real owner. But the court, on page 568, says:

"In one particular the contract in question differs from any ordinary contract for the collection of a principal's money by an agent. Upon the collection of a draft or check by the Fidelity National Bank it was not required to keep the proceeds by itself as the plaintiff's property but might mingle it with its own money and make itself the plaintiff's *debtor* for the amount received. As soon as the proceeds became part of the funds of the Fidelity National Bank under this arrangement, the plaintiff's right to control it as specific property was gone, and the plaintiff had instead the right to recover a corresponding sum of money."

The case of *Freeman's National Bank* vs. *National Tube Works Company*, 151 Mass., 413, was also a case where the draft upon which the controversy arose was not due at the time of the failure, and the court, on page 418, says:

"One who collects paper through the agency of banks must be held impliably to contract that the business may be done accor-

ding to their well known usages, so far as to permit the money collected to be mingled with the funds of the collecting bank. When a payment is made to his agent, and the money is put with the money of the collecting bank, he has a right to receive a corresponding sum, but he loses his right to the specific funds. In absence of directions to the contrary, the collecting bank must pay to the bank to which it should regularly be remitted by setting it off against the debt due from that bank, and giving credit for it in the account."

The case of

The *I. & T. N. Bank* vs. *Peters, et al*, 123 N. Y., 272, cited in counsel's brief, is decided solely on the ground of the fraud in the transaction which is the basis of the case. The case of

W. Sweeney, et al vs. *Easton*, 1 Wall., 166, was also as to commercial paper not due at the date of insolvency, but collected afterwards.

The case of *White* vs. *Bank*, 102 U. S., 658,

insolves solely the title to the paper and the liabilities of the endorsers. The paper itself had not been paid, and no question as to the proceeds could or did arise.

Admitting, then, that the original relation between the parties was that of principal and agent, I claim that it terminated when the paper was collected. If paid direct to the Fidelity National Bank of Cincinnati, it had the right to deposit the proceeds with its other funds and to use them in its business. If collected elsewhere, it had the right to use the proceeds in the credits which it received from its correspondent by which means it could retain at home an equal amount of its other funds which it might otherwise have been compelled to remit to its correspondent, or it might obtain from its correspondent interest on its balances, or any other advantages which might result to it from that credit. It would thereby receive the compensation for its services contracted for in the agreement for making the collection. This right continued until the period when it had agreed to remit the proceeds which had been collected. After the collection had been properly made the only obligation of the Fidelity Bank was to remit the balance of account at a future day. There was no act of agency to be per-

formed after the collection of the money. The duty then was to deposit it, give the party proper credit for it, and on the 21st to remit the balance of account. All these are the acts of a debtor, and not of an agent. In all the cases which have been cited, these facts have been held to constitute the relation of debtor and creditor. No provision was made for any other relation than the usages of bankers provided for. The court below, however, held that after the collection the relation of principal and agent still continued, and that of creditor and debtor never began. In this holding I think the court erred.

VI.

I have claimed that the manner in which this paper was remitted and accounted for made it the property of the Fidelity Bank as soon as received by that bank and credited on its books. It was remitted for credit, and the credit was given. The only condition attached to that credit was that in case the paper should not be paid it might be charged back to the Commercial National Bank. It seems to me that this did not change the character of the credit. It was only a convenient mode of carrying into effect what the bank had the right to do by reason of the endorsement of the Commercial National Bank.

I have already cited the case of the Circleville Bank, in 33 Fed. Rep. upon this point.

The case of *Brooks* vs. *Bigelow*, 142 Mass. 6, is to the same effect. Where it is held:

"If a check made in this commonwealth, and payable to a resident of another State is deposited by him in the bank there where he has a general account under an agreement that all checks drawn on banks in other places shall be passed to his credit on the day of deposit, but if they are returned unpaid shall be charged to his account, and by the law of the State the bank is not his agent to collect his check, but becomes the owner of it with the right of charging it back to his account if it is not paid by the bank on which it is drawn, the receiver of the bank which suspends on the day of such deposit, may maintain an action for the amount of the check against the maker, who cannot avail himself in defense of

the fact that upon such suspension the payee of the check stopped payment of the same.

In *Ayers* vs. *Farmers' & Merchants' Bank*, 79 Mo., 425. from a similar fact, the Court held:

"It was in effect a purchase of the paper by the Mastin Bank, and the fact that on default of payment by the drawee that bank had recourse upon the endorser, did not prevent the title from passing. Such is the right of every endorser for a value, but he is none the less the owner of the paper".

And, again:

"And it is immaterial that if the paper is not paid the bank has the right to charge it back".

In *Flanery* vs. *Coats, et. al.*, 80 Mo., 484, the Court held:

"If paper is deposited or forwarded to a bank for collection, and in pursuance of the usual mode of dealing the bank places the amount to the credit of the depositor and the latter thereupon draws, or is entitled to draw against the same as cash, this works a transfer of title, so that the depositor cannot afterwards claim the paper, and it is immaterial that if the paper is not paid the bank has the right to charge it back".

In the case of *Titus & Scudder* vs. *Mechanics' National Bank*, 6 Vroom, 588, the court, speaking of checks deposited in a manner similar to the one now before the court, says:

"They were received and credited the same as notes or bills of other banks; by such crediting the bank becomes the owner of these bills as they do of legal tender notes or bank notes so deposited; and had the defendant failed the next day, plaintiffs could not have demanded these same checks as their property left for collection against a receiver or assignee in bankruptcy. The plaintiffs had received the price of these checks by having them credited on their overdrafts and by drawing for it. Any balance due to them from the drafts would be paid like other creditors' demands pro rata out of the assets of the insolvent.

The entire custom of banks confirms my theory of this transaction. Checks and sight drafts, though on different points, are treated by banks as cash, received from their customers as cash, forwarded to their correspondents as cash, and as said by Mr.

Graham in his testimony, the transaction of this bank in so charging these checks to the Fidelity National Bank made an absolute indebtedness from that bank to the Commercial National. It made no difference that the Fidelity National had the right if the checks were not paid to charge them back to the Commercial National Bank. But even if that renders the credit a conditional credit, it had become absolute by the payment of the drafts and checks before the failure of the Fidelity National Bank. Every fact had occurred that was necessary to constitute an indebtedness to the Commercial National Bank for the amount of the checks.

I claim, therefore, that the proceeds of the collections in controversy in this case, had become the property of the Fidelity National Bank before its failure, and passed to the receiver as assets to be divided pro rata among all the creditors of the Fidelity National Bank. And that the judgment of the Circuit Court in this regard should be reversed, and the cause remanded for further proceedings to carry out this view of the case.

I now desire, in a very few words, to consider the questions arising on the appeal of the Commercial National Bank.

This appeal involves collections made by the correspondents of the Fidelity National Bank before its failure, the proceeds of which were credited by the collecting bank to the Fidelity National, but as the Fidelity National was then indebted to the collecting bank on general account, no money was forwarded by the latter to the receiver. The claim made for the appellant in this matter is thus stated by counsel in their brief :

"The Fidelity National Bank received from complainant for collection, as complainant's agent, the paper, the proceeds of which are here in controversy. Thereafter, the same having come into the hands of sub-agencies of the Fidelity National Bank, which sub-agencies had from the form of the endorsement actual notice of complainant's rights, respondent, without the knowledge or consent of complainant, converted the same to his own use by consenting that said sub-agents should apply the same in payment of debts due to them from the Fidelity National Bank (Record page 170). There was in cash in the Fidelity National Bank, at the date of its failure, $110,000.00 which came to the hands of respondent as its receiver ; we claim that under the circumstances thus detailed, complainant is entitled to a charge on the funds in the Fidelity National Bank for the amount of its claim."

And again,

"So if being indebted to a correspondent, it paid its debts with complainant's paper. At the time it did so, it collected that paper at least as against the complainant. And complainant had a right to assert that it had that amount of cash in its treasury."

If I am correct in the positions stated, in the argument on Armstrong's appeal, they dispose fully of this appeal, also. But if that claim is not sustained by this Court, still on authority the appellant has no right to the money which it now claims. Most of the cases cited by appellant's counsel, as I have already shown, dispose entirely of this claim. Especially those in 148 and 151 Mass. and 117 New York.

But do the facts in the case sustain the claim so presented? Did the receiver consent that the sub-agencies should apply such proceeds to the payment of debts due to them from the Fidelity National in such a manner as to increase the assets of the trust, or to deprive the appellant of any rights which it otherwise would have had? Is there any averment of the kind in the bill, or admission of it in the answer? Is there a particle of testimony showing such to be the fact? It is true that the master reports a list of collections "made by correspondents, and credited with the assent of said Fidelity or its receiver, on the indebtedness due such correspondents from said Fidelity National Bank". But the report does not state which of the two gave the assent, or in what particular cases the receiver assented, or in what manner by such assent the assets of the trust were increased, or the rights of the appellant lost or affected. Indeed, there was no occasion for the receiver to assent to any such credits given to the account of the Fidelity National by correspondents for collections made by them before his appointment as receiver. He could not force a creditor to prove against the trust a larger claim than such creditor chose to prove.

But no debt of the Fidelity National was, in fact, paid by these credits. Not a dollar was added to the assets, or a dollar taken from the liabilities of the Fidelity National. If its liability to the collecting bank was thereby diminished, its liability to the Commercial National was, to the same extent, increased. It was only a question whether the Fidelity National should owe a certain sum to one or to the other, and it made no difference to the receiver to whom he should pay dividends for such indebtedness. The money never came into the hands of the receiver; the assets in his hands were not thereby increased. If the collections belonged to the appellant, it had the right to collect it from the collecting bank, and the collecting bank, if compelled to pay the sum to the appellant would then be entitled to the same dividend as would have been paid in the other case. The appellant was not deprived of any right which it otherwise would have had. No credit given by a collecting bank to a party not entitled to it, and no assent to such a credit by the Fidelity National or by the receiver, could change the rights of the appellant. It had the same

right to demand and collect the proceeds of paper belonging to it, after, as before, such credit. The fact that the collecting bank made an improper credit should not compel the receiver to pay that claim in full, when, if the credit had not been given, the same dividends would have been paid on that indebtedness as to other creditors.

But as between the Fidelity National Bank and the collecting bank, such credit was a perfectly proper one.

The Fidelity National could not have prevented the credit. It could not have insisted successfully that the money so collected should be forwarded to it, leaving its indebtedness to the collecting bank unpaid. The receiver after his appointment had no greater rights than the Fidelity National had.

The court below, in deciding this part of the case, after citing a large number of authorities, held as follows, See 39, Fed. Rep., page 692:

"Those authorities impose upon complainant the duty of tracing the funds it seeks to have impressed with a trust character into the defendant's possession, either in their original or in some substituted form, and the burden of identification is imposed upon all owners seeking to follow their property or its proceeds. No well considered case has gone to the extent of holding that when an agent converts or misappropriates his principal's property or funds, and thereafter fails, his general estate will be impressed with a trust for the re-embursement of such principal on the ground that such estate has been benefited, and to an equal amount by the agent's breach of duty. Every creditor could rest a like claim to priority of satisfaction on the same ground."

Let us now consider the cases cited by counsel for appellant, to see if they at all justify their claim.

In *Peake* vs. *Elliot*, 30 Kan., 161, the plaintiff gave $782 50 to the cashier of a bank to pay a note of the plaintiff to the bank, but which, in fact, was not then held by the bank. It was not given or received as a deposit. The money remained in the bank for that specific purpose, but the money was not so applied, and the bank failed. The court held that the bank held this money as a trust fund, and not as assets of the bank, and that the receiver

should pay it to the plaintiff. The ground on which the judgment was given bears no resemblance to the claim in this case.

The case of the *People* vs. *City Bank of Rochester*, 96, N. Y., 32, was very similar. Checks were given by the maker of notes to pay them, supposing that they were held by the bank. The bank collected the checks but did not pay the notes, which were held by other parties. The court, as the basis of its judgment, held:

"That the transaction between the bank and said firm was not in their relation of debtor and creditor, nor in that of bank and depositor, but by it a trust was created, the violation of which constituted a fraud by which the bank could not profit, and to the benefit of which the receiver was not entitled."

In this case, also, money was paid to the bank for a specific purpose, not as a deposit, nor for the bank to use at all; and at the date of failure was in the bank increasing the the assets which the receiver received. No such case is made here.

The next case cited by counsel is that of

McLeod vs. *Evans*, Assignee, 66 Wis., 401,

which is a most remarkable case. The plaintiff in that case gave to a banker a sight draft on New York for $1,500.00. He at first desired the cash for it, but finally agreed that the banker might send it to New York, and that he would wait until the proceeds could be returned to him. Instead of sending the draft to New York to have the proceeds remitted to him for the owner, the banker sent it to a Chicago Bank and had the amount placed to his credit, and immediately drew out the proceeds, and soon afterwards failed. At the time of failure there was only $500 cash in the bank, and there was no evidence that any part of the proceeds of the plaintiff's draft had actually gone into the assets which were assigned in any way. Indeed, it was impossible that such could have been the case; yet the court held that there was a trust which should attach to all the assets of the banker in favor of the owner of this draft. Only three of the five judges of the court concurred in this opinion; the other two dissented.

I do not think that another such case of an application of a general lien on an entire insolvent estate to pay one debt simply

because it was fraudulently contracted can be found. The result of this decision is to take Wisconsin out of the general rules governing deposits in banking institutions. Accordingly, Morse on Banking, in stating the legal effect of a deposit in bank (section 185), says:

"Except in Wisconsin, where a bank is held to have no right to treat the proceeds of a collection as its own money, but must treat it as trust money in all cases."

And again,

"In Wisconsin the proceeds are always held in trust"

If Wisconsin is out of the line of the ordinary principles governing deposits in bank, the decision of its courts can have no weight in the decisions of such cases by courts generally.

The only other case cited by counsel is that of *Jones, et al,* vs. *Kilbreath,* decided by the Supreme Court of Ohio, and reported in the 31 N. E. R., page 346.

In that case Fosdick deposited a draft on New York in the Ohio Life Insurance & Trust Company for collection. It matured after the failure of that bank. After such failure a creditor in New York sued it, and attached its assets in New York, including the draft in question, then not due. At maturity the draft was paid to the sheriff who was in possession of the attached property. Upon the appointment of Killbreath as assignee of the bank, he settled the claim of the attaching creditor, and after such settlement the attached property was returned to him. The amount collected on the draft so paid was credited on the indebtedness of the attachment creditor and the balance paid by the assignee. In this case the draft was still clearly the property of Fosdick as it has been left simply for collection, an dhad not been collected at the date of failure. If the property attached and returned to the assignee was sufficient to have paid the debt of the attaching creditor, without the proceeds of the Fosdick draft, then the decision is clearly right. Fosdick could have prevented this draft from being taken in the attachment, and the debt could have been collected from the other assets so attached. That this was the basis of the decision is clear from the statement in the opinion that

"The estate of the Trust Company was thereby increased to the extent of the amount of the draft for the benefit of all its creditors".

I do not think that either of the cases referred to sustain the claim made by counsel for appellant. And I submit, therefore, that the decision of the Circuit Court on this part of the case should be sustained.

JOHN W. HERRON,

Counsel for David Armstrong, Receiver.

148 U.S. 50

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OCTOBER TERM, 1892.

Nos. 76 and 77.

THE COMMERCIAL NATIONAL BANK OF PENNSYLVANIA, APPELLANT,

vs.

DAVID ARMSTRONG, RECEIVER, &c.

DAVID ARMSTRONG, RECEIVER, &c., APPELLANT,

vs.

THE COMMERCIAL NATIONAL BANK OF PENNSYLVANIA.

IN ERROR TO THE CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF OHIO.

Statement of the Amounts for Which Judgment Was Given Against the Receiver.

The collections made and credits given to the Fidelity by correspondent banks were as follows:

June 11, 1887		$978 26
13,		77 08
14,		600 74
15,		643 70

June 16, 1887		$410 19
17,		902 54
18,		407 21
20,		2,593 10
		$6,612 82
After 20th		2,380 69
		$8,993 51
Of that collected after 20th there was of cash items	$2,071 01	
	309 68	
		2,380 69

On June 11, 1887, the Fifth National Bank of St. Louis credited to the Fidelity $8,754.11, of which $496.97 was for paper forwarded to the Fidelity by the complainant. On the same day it paid out for and charged to the Fidelity $40,649.14, and still owed the Fidelity at the close of banking hours $38,108.67. Between the 11th and the 21st it collected for and credited to the Fidelity $83,992.25, of which $1,080.92 was for paper sent to the Fidelity by complainant, and it paid out and charged to the Fidelity during the same time $89,913.07, leaving still due to the Fidelity at the failure $33,187.85.

The American National Bank of Kansas City on June 11 collected one item in controversy, amounting to $481.29, and, including that item, collected in all $1,279.83 and paid out $2,283.61, leaving a balance in favor of the Fidelity of $12,351.81. Between that date and the failure it collected for the Fidelity $33,483.05, of which only $1,959.45 was for paper forwarded by complainant to the Fidelity, and it paid out $22,664.03, leaving due the Fidelity at failure $25,170.73.

JOHN W. HERRON,
For Receiver.